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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 627

GEORGE P. PORTER, AUDITOR AND EX-OFFICIO INVESTMENT COMMISSIONER OF THE STATE OF MONTANA, APPELLANT,

vs.

INVESTORS SYNDICATE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA

FILED JANUARY 11, 1932

(36,441)

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IN UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA (HELENA DIVISION)

In Equity. No. 1190

INVESTORS SYNDICATE, a Corporation, Plaintiff,

vs.

GEORGE P. PORTER, Auditor and Ex Officio Investment Commissioner of the State of Montana, Defendant

BILL OF COMPLAINT—Filed June 24, 1931.

The plaintiff, Investors Syndicate, a corporation, brings this, its bill of complaint, against the above named defendant, and for cause of action alleges:

I

That plaintiff is, and has been for many years, a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, with its principal office and place of business in the City of Minneapolis, in said state, and is a citizen of the State of Minnesota.

That defendant, George P. Porter, is and has been since prior to the year 1930, the duly elected, qualified and acting Auditor of the State of Montana, and Ex Officio Investment Commissioner of said State and a citizen thereof.

II

That this is a suit of a civil nature, and the matter in controversy exceeds, exclusive of interest and costs, the [fol. 3] sum of value of Three Thousand ($3,000.00) Dollars, as will appear from the further allegations hereof, and is wholly between citizens of different states, to-wit, plaintiff, a corporation and citizen of the State of Minnesota, and defendant a citizen of the State of Montana.

That this is also a suit arising under the Constitution of the United States, as will appear from the allegations following.

III

That plaintiff was organized and incorporated under the laws of Minnesota on the 29th day of June, 1894, to engage in the business of issuing and selling certain investment certificates in said state and elsewhere, and ever since has been so engaged; that it has engaged in the sale of said certificates to the general public in the State of Montana continuously since the month of January, 1930; that by the said certificates so issued and sold plaintiff agrees therein, that in consideration of the payment by the purchaser and holder of either one sum or of installments over a period of years, to pay to the holder at the expiration of the period stated therein a certain definite sum of money, in accordance with the terms and provisions set forth therein, all of which fully appear from copies of such certificates hereto attached and marked Exhibits "A" and "B" respectively, and made a part hereof.

IV

That plaintiff is now, and, at all times herein mentioned, has been a foreign investment company, within the provisions of Sections 4026 to 4055 inclusive of the Revised Codes of Montana of 1921, as amended, commonly known and referred to as the Blue Sky Law of Montana.

V

That on the 8th day of January, 1930, the defendant, as Investment Commissioner of the State of Montana, pursuant to the terms and provisions of said Blue Sky Law, issued to plaintiff a permit and statement reciting that [fol. 4] plaintiff had complied with the provisions of said law; that detailed information regarding plaintiff and its certficates offered by it for sale was on file in his office for public inspection and information, and that plaintiff was permitted to do business in the State of Montana, under the provisions of said law; that said permit has never been forfeited or revoked and still remains in full force and effect; a copy of said permit so issued is hereto attached, marked Exhibit "C" and made a part hereof.

VI

That plaintiff filed an annual statement for the year 1930, as required by Section 4041 Revised Codes of Montana of

1921, showing its financial condition, amount of its properties and liabilities, and all information concerning its affairs required by said Investment Commissioner, and it appearing from such statement that the assets of this plaintiff exceeded the sum of Five Million ($5,000,000.00) Dollars, plaintiff paid to the said Investment Commissioner, prior to the first day of July, 1930, a fee of Five Hundred ($500.00) Dollars, as provided in Section 4050 of the Revised Codes of Montana of 1921, as amended by Section 5 of Chapter 179 of the Laws of Montana of 1929.

VII

That on the 22nd day of June, 1931, the defendant, as such Investment Commissioner, made and issued a rule or order addressed to this plaintiff, and other investment companies doing business in the State of Montana, a copy of which is as follows:

"It is therefore ordered that from and after the 22nd day of July, 1931, the following rule shall be in full force and effect:

"In the interests of the investing public, any investment company operating in the State of Montana shall not issue, sell, or distribute, any bonds, certificate of indebtedness, collateral trust certificates or any other device whatsoever, that might be deemed a security creating a debtor-creditor relationship, which has a withdrawal privilege, before maturity, that does not provide for withdrawal of installments paid thereon due any time after the first year, if the owner or holder shall have given ninety (90) days notice in writing of his intention to make such withdrawal and such owner or holder shall be entitled to receive the [fol. 5] total amount of all installments paid in, less only a withdrawal penalty not exceeding three and one-half (3½) per cent of the matured or face value of such securities, plus interest compounded annually, at the rate at which said securities are guaranteed to mature or represented to pay at maturity; and provided further, that the bond or contract representing such security and the application for the same shall have printed thereon, the amount paid in, the withdrawal or surrender value thereof, and the loan value at the end of each year of its duration.

It is further provided that none of the above securities as enumerated shall be permitted to be sold in the State of Montana unless there is a wtihdrawal privilege provided each year beginning with the first year until maturity.

Dated at Helena, Montana, this 22nd day of June, 1931.

Geo. P. Porter, State Auditor and ex Officio Investment Commissioner."

That the said Investment Commissioner, in making and issuing said order, assumed to act under and exercise authority conferred by the Blue Sky Law of Montana, as will appear from what are designated by him "Findings", delivered to and served upon this plaintiff, with said order, a copy of which are as follows:

Findings

1. The Commissioner maintains that Section 4043 of the Revised Codes of Montana, 1921, confers authority for the promulgation of the proposed rule in the following language:

"• • • The Investment Commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock brokers, domestic or foreign, licensed under this act."

2. The Commissioner believes that the provisions of Section 4036, Revised Codes of Montana, 1921, providing in part:

"• • • Such permit, however, shall be subject to revocation at any time by the Investment Commissioner for cause to him sufficient."

clearly gives the Commissioner authority to cancel permits.

3. That the above mentioned provision of law impliedly gives to the Commissioner the right to impose a lesser penalty, namely, the removal of all unfair provisions in [fol. 6] contracts.

4. That Section 4045 of the Revised Codes of Montana, 1921, provides in part as follows:

"Revocation of Permits and Appointment of Receiver.—Whenever, it shall appear to the Investment commissioner that the assets of any investment company doing business

in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, unequitable, or unauthorized manner, or is jeopardizing the interests of its stockholders or the investors in stocks, bonds or other securities by it offered for sale, or whenever any investment company shall refuse to file any papers, statements, or documents required under this Act, or shall refuse to permit an examination by said investment Commissioner, or his deputies or agents, as provided in this Act, without giving satisfactory reasons therefor, said investment commissioner shall at once cancel its permit. * * *"

The Commissioner believes that a loading charge of from 5% to 8% is highly inequitable as this term is defined in this section.

5. That it is unreasonable and inequitable to maintain that investment companies who were operating in Montana prior to the enactment of the present investment act should not be amenable to the same reasonable and lawful supervision and control by this Commissioner as exercised on companies coming under his supervision at a larger date.

6. That this Commissioner is continually receiving complaints to the effect that agents of investment companies misrepresent to prospective purchasers either by not stating the provisions relating to withdrawals or by alleging that investors can procure their money at any time.

7. That in justice to the investing public, during the period of depression, they should not be unreasonably penalized for conditions beyond their control, caused by unemployment or depreciation of commodity values.

8. That the proposed rule is a reasonable one as evidenced by its adoption by certain of the investment companies operating in this state and by testimony produced at the hearing.

9. That a maximum withdrawal penalty of 3½% is amply sufficient in case of forfeiture of investment installment contracts and that withdrawals should be permissable at any time after one year."

[fol. 7] VIII

That said Investment Commissioner threatens to and will, unless plaintiff complies with said order, cancel the permit issued to plaintiff, as aforesaid.

IX

That the provision of Section 4036 of the Revised Codes of Montana of 1921, upon which defendant relies as authority for the making and issuing of said order, as appears from said findings, is in violation of, repugnant to, and in conflict with Section 1 of Article 14 of the Amendments to the Constitution of the United States, in that it authorizes said Investment Commissioner to deprive this plaintiff of its property, consisting of said permit and the right to sell said certificates in the State of Montana, and of its liberty of making and entering into the contracts evidenced thereby, without due process of law, and denies to plaintiff the equal protection of the laws.

X

That Section 4045 of the Revised Codes of Montana of 1921, pursuant to which the said defendant assumed the right to determine and find that the said certificates which plaintiff was authorized to sell, and is selling in the State of Montana, are inequitable, is in violation of, repugnant to, and in conflict with the due process of law clause of the 14th Amendment to the Federal Constitution in that it authorizes said Investment Commissioner to deprive plaintiff of its property, consisting of said permit and the right to sell said certificates in the State of Montana, and of its liberty of making and entering into the contracts evidenced thereby, without due process of law and denies to plaintiff the equal protection of the laws.

XI

That the aforesaid rule or order is arbitrary, unreasonable and illegal, and in violation of and in conflict with the due process of law clause of the said 14th Amendment in that it will deprive plaintiff of its property, consisting of said permit and the right to sell said certificates in the State [fol. 8] of Montana, and of its liberty of making and enter-

into the contracts evidenced thereby without due process aw and denies to plaintiff the equal protection of the s.

XII

hat plaintiff has sold and is now engaged in selling its ificates in 35 states and in 8 of the provinces of Canada; the terms and provisions of its certificates which it has and is now selling in said other states and provinces the same as exhibits "A" and "B" hereto; that to com- with said order as to the terms and conditions of its ificates hereafter offered for sale and sold in the State Montana, would result in unjust and unfair discrimina- between the purchasers and holders of said certificates the holders of certificates heretofore sold in the State Montana and elsewhere; that the necessary result of rule and order, and the enforcement thereof, would be ompel plaintiff to withdraw from and discontinue the of the certificates in the State of Montana and to de- e plaintiff of its right to sell such certificates in said e, the value of which right is largely in excess of 0.00, and plaintiff would thereby suffer irreparable in- , damage and loss.

hat in the year 1930, the plaintiff sold in the State of tana certificates of the maturity value of $2,141,200.00, that there are approximately 4500 holders of such ificates in the State of Montana.

XIII

hat plaintiff's method of selling said certificates and the way in which the same can be sold at a profit is by ns of agents and plaintiff now has over 20 agents or smen in said state, all of whom have been duly licensed ell said certificates, by said defendant as Investment missioner. That if said order becomes effective and permit is cancelled, such agents will, of course, refuse ell said certificates in fear of criminal prosecution and usiness of this plaintiff in the State of Montana will be upted and destroyed to its great and irreparable injury damage, even though it should finally be determined said order was made without authority and is wholly lid.

[fol. 9] XIV

That the penalties provided by Section 4049 of the Revised Codes of Montana of 1921, for a violation of the provisions of said Blue Sky Law, are so large and severe that unless the enforcement of said order is enjoined, plaintiff would be compelled to obey said order or cease selling its certificates in the State of Montana, notwithstanding it is convinced that said order will be ultimately adjudged and decreed to be unlawful, by reason whereof said Section 4049 is in conflict with, repugnant to and violative of the due process of law clause of the said 14th Amendment and denies to plaintiff the equal protection of the law in violation of said amendment.

XV

That the cancellation or attempted cancellation of said permit would cause the public and investors generally to believe that plaintiff's certificates are unsound and unsafe and that the sale and purchase thereof are prohibited by the laws of said state and would greatly retard, if not wholly prevent, the sale of said certificates in Montana, to the great irreparable injury and damage of plaintiff.

XVI

That copies of said certificates were presented to and filed with said Investment Commissioner prior to issuance of such permit and said Commissioner found that such proposed contracts contain and provide for a fair, just, and equitable plan for the transaction of business and promise a fair return, which finding was in accord with the terms and provisions of such certificates.

XVII

That plaintiff has no plain, speedy or adequate remedy in the ordinary course of the law.

Wherefore plaintiff prays:

1. That it be adjudged and decreed that said order is illegal and void.

[fol. 10] 2. That a writ of preliminary or interlocutory injunction, effective during the pendency of this suit, issue,

directed to said defendant, enjoining and restraining him from revoking or purporting to revoke or attempting to revoke plaintiff's permit, because of the failure of plaintiff to comply with said order, and also from instituting, causing, aiding, or encouraging institution, prosecution or maintenance of any action, criminal or otherwise, against plaintiff or any of its officers, agents and employees, or any other person, for or on account of the failure of plaintiff to comply with said order.

3. That a temporary restraining order issue, enjoining and restraining the defendant as aforesaid, pending the determination of the application herein for an interlocutory injunction.

4. That upon final hearing, such injunction be made perpetual.

5. That the plaintiff may have all other proper and equitable relief.

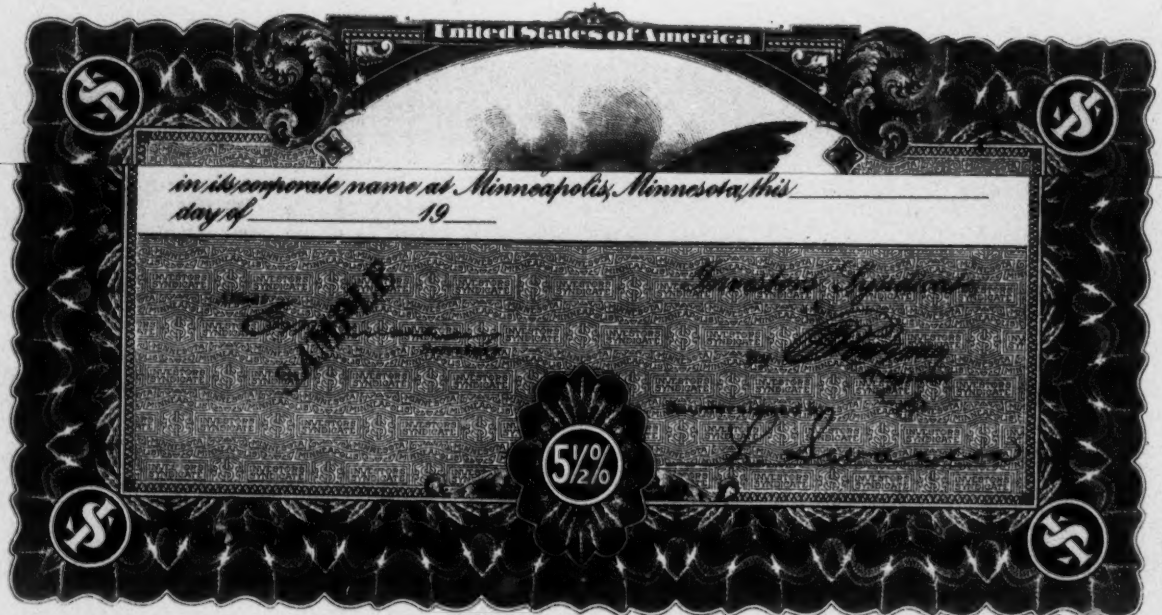
6. That this Honorable Court grant to plaintiff a writ of subpœna, directed to said defendant, commanding him to appear on a day certain and make answer to this complaint, (but not under oath, answer under oath being expressly waived) and to abide the further order of the court.

Dated this 23rd day of June, A. D. 1931.

Investors Syndicate, by M. S. Gunn, Gunn, Rasch, Hall & Gunn, Residents of the City of Helena, State of Montana, Solicitors for Plaintiff. Henry M. Isaacs, of Counsel, Resident of Minneapolis, Minn.

[fol. 11] *Duly sworn to by J. A. Miller. Jurat omitted in printing.*

(Here follows Exhibit "A," installment investment certificate, side folios 12, 13, 14, and 15)



AMERICAN BANK NOTE COMPANY, LITHO.

10A

12

EXHIBIT "A"

FOUNDED 1894

INVESTORS SYNDICATE

INCORPORATED UNDER THE LAWS OF THE STATE OF MINNESOTA

HOME OFFICE
MINNEAPOLIS, MINNESOTA

INSTALLMENT INVESTMENT CERTIFICATE

This is to Certify that in consideration of the payment of Seventy-Four ($74.00) Dollars, annually in advance during the period of ten years from date hereof, the Investors Syndicate, first party, hereinafter referred to as the Company, hereby promises to pay to

_____

of _____ *hereinafter referred to as the second party, at the expiration of said period, upon presentation and surrender of this Certificate to the Company at its office in the City of Minneapolis, Minnesota, the sum of*

ONE THOUSAND DOLLARS.

This Certificate is subject to the privileges, terms and conditions on the second, third and fourth pages hereof which are hereby referred to and made a part hereof, as fully as if set forth in the face of this Certificate.

SPECIAL SETTLEMENT OPTION

The owner of this Certificate by written notice delivered to the Company at its Home Office, accompanied by the Certificate for endorsement, with right of revocation, may elect to receive in lieu of the face amount in one sum when this Certificate matures a monthly income of

SIX AND 66/100 — — — — — — — — — — — — — — Dollars

until one hundred twenty such monthly payments have been made and at the end of the monthly payment period a further payment in one sum equal to one-half the face amount of this Certificate, or

FIVE HUNDRED AND NO/100 — — — — — — — — Dollars.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed in its corporate name at Minneapolis, Minnesota, this _____ *day of* _____ *19*____

5½%

10A

PRIVILEGES AND CONDITIONS

1. SECURITY. The Company agrees to keep and maintain at all times first mortgages or first deeds of trust on improved real estate, cash, government and municipal bonds and other securities that qualify for investments of life insurance companies under the laws of the state of New York, in an amount equal to $110 for each $100 of its liability hereunder and under all other like outstanding certificates issued by it, said liability being the optional settlement amounts as shown in Paragraph 11 less the amount of any loans made hereon.

2. PAYMENTS. This Certificate is payable annually in advance, but the second party shall have the right to meet any current year's requirements by monthly payments of $6.50, quarterly payments of $19.30 or semi-annual payments of $38.40 on each $1,000 of the maturity amount of this Certificate. The second party shall have the right at any time to change from one method of payment to another.

3. ADVANCE PAYMENTS. Any payment made in excess of the current year's requirements shall be deemed an advance payment and shall bear interest at the rate of 5½% compounded annually, and shall increase by such amount plus the interest credited thereon, the optional settlement rights. Such advance payments shall be applied on annual payments when they become due. Whenever the advance payments with interest and the installments with interest shall equal the maturity amount hereof, then the Company will pay interest annually in cash at 5½% per annum to the second party, his heirs or assigns, until maturity.

4. NON-FORFEITURE PROVISIONS.

(A) In the event payments are not made when due, this Certificate may be reinstated at any time by resuming monthly or other specified payments if default has continued for less than two years, but no interest will be allowed hereon during the period of default, and in the event of such resumption of payments the maturity hereof and the due date of remaining payments shall be extended for a period equal to the time default continued, time being the essence hereof.

(B) In the event the second party discontinues payments hereon for a period of two years the rights of the second party are not thereby forfeited but the second party shall have the following options:

1. Receive the sums payable under optional settlement rights stated in Paragraph 11.

2. Receive a Paid Up Certificate in accordance with Paragraph 6.

3. In the event this Certificate has not attained optional settlement rights as stated in Paragraph 11, receive with credit in full for all payments made hereon, a new installment certificate of the kind and at the rate then being issued, upon written request and the surrender of this Certificate and upon resumption of payments and the payment of $1.00 reissuance charge; provided no credits shall be deemed advance payments, and this right shall continue so long as the Company is engaged in issuing like certificates.

Should the second party fail to exercise any one of the above options the Company may at any time after said two year default, issue a Paid Up Certificate which shall thereupon supersede this Certificate. In the event of a default for more than two years, where no optional settlement rights under Paragraph 11 have accrued, then, except as to the right to receive a new certificate under option 3 herein with sums credited thereon, the rights of the second party shall cease and determine.

(C) REINSTATEMENT RIGHTS. In the event the second party shall reinstate this Certificate after default by resuming payments and shall thereafter make up such defaulted payments and apply for the maturity or optional settlement value, he shall be entitled to receive the then present worth of such maturity or optional settlement value under Paragraph 11, for the time paid for computed at 7% per annum for the period from date such optional settlement or maturity value is paid, to the extended due date.

5. OPTIONAL SETTLEMENTS IN THE EVENT OF DEATH OR DISABILITY. In the event of total and permanent disability as herein defined, or in the event of death, the second party, or his legal representatives, may elect (a) to continue this Certificate by making payments thereon, or (b) surrender the same and accept the full amount paid hereon with interest at the rate of 4% per annum compounded annually computed on sums from dates paid to date of total disability or death, as the case may be, subject to the ninety day notice provided in Paragraph 8. Total disability shall mean that the second party, as a result of sickness or injury, has become totally and permanently disabled while a holder of this Certificate and before he attains the age of sixty years and has become unable to engage in any gainful occupation for the balance of his life. No sums will be payable until the Company has received legal proof of death or permanent total disability required by it. If this Certificate is issued other than to one individual, the provisions of this paragraph shall not apply except when issued in the name of one person for a minor, in which event the second option (b) herein shall apply only in the event of the death or permanent total disability of the first person, but the proceeds shall belong to the minor.

6. PAID UP CERTIFICATE. If this Certificate has been in force for any of the periods shown in the following schedule, exclusive of any period or periods of default, the second party upon written request shall have the right to surrender this Certificate and receive a Paid Up Certificate for the following amounts per thousand of maturity amount of this Certificate, due and payable in one sum ten years from date request is received:

18 mos.	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.
$118	$156	$283	$434	$632	$799	$990	$1202	$1418

7. ASSIGNMENT. This Certificate if in force and uncancelled on the books of the Company may be assigned, but the assignment or transfer hereof shall not be valid without the consent in writing endorsed hereon by the Company and a transfer fee of $1.00 paid to the Company; provided that in case of assignment the permanent total disability benefits shall apply only if such permanent total disability occurs to the assignee wholly after the assignment is endorsed by the Company hereon.

8. MISCELLANEOUS. No agent or other person has authority to alter or change the terms of this Certificate or bind the Company by any statement, written or oral, not herein contained. The Company shall have the right at all times to call in this Certificate and cancel the same by paying the second party the full amount paid hereon together with interest at 5½% compounded annually for the time the Company has had the use of the money, less any indebtedness due the Company, and shall have a like right to call in and pay off any certificate issued in lieu hereof or any of the optional settlements herein, by paying the then present worth computed on the basis of 5½% compounded annually, less any loans made thereon. The Company if it so elects may require ninety days written notice as to any loans or optional settlements hereunder except that this requirement shall not apply to the maturity payment of this Certificate nor to any fixed or installment payments after maturity that are elected by the second party at or prior to maturity.

9. CASH IN FULL GUARANTEED AT MATURITY. Anything in this Certificate to the contrary notwithstanding, the second party shall at the time of maturity and upon surrender of this Certificate, be entitled to receive, and the Company guarantees then to pay in cash the face amount hereof less any indebtedness due the Company.

10. CERTIFICATE LOANS. The Company will loan at any time, upon proper assignment of this Certificate as sole security, a sum equal to (or less, at the option of the second party) the optional settlement amounts then payable under Paragraph 11 of this Certificate.

11. OPTIONAL SETTLEMENTS PRIOR TO MATURITY. After this Certificate has been in force for any one of the periods shown in the following schedule, exclusive of any period or periods of default, the second party, upon written request and surrender of this Certificate, may elect to receive in cash, per thousand of maturity amount, the sums shown in the following schedule, less any indebtedness secured by this Certificate:

18 mos.	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs.
$42	$84	$166	$254	$370	$468	$580	$704	$830	$1000

12. OPTIONAL SETTLEMENTS AT MATURITY. The second party may elect in lieu of cash when this Certificate matures, any one of the following settlements, by notifying the Company of his election prior to maturity and having such election endorsed by the Company on this Certificate, and the Company agrees to keep and maintain the same class of security as specified in Paragraph 1 in an amount not less than its liability.

OPTION A. The Company agrees to pay interest annually at 5½% per annum thereon, or if interest is allowed to accumulate, all sums will be compounded and interest credited annually. At any time after maturity the second party may request final settlement, and upon request principal and accrued interest to the last interest accrual date will be paid by the Company.

OPTION B. To continue paying under the terms of this Certificate, the annual, semi-annual, quarterly, or monthly payments and receive at the end of any annual period paid for after maturity upon surrender of this Certificate, the following sums per thousand of maturity amount of this Certificate:

1 yr.	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs.
$1133	$1273	$1421	$1577	$1742	$1916	$2100	$2293	$2497	$2713

OPTION C. The Company agrees to pay the maturity value and interest in annual, semi-annual, quarterly or monthly payments, said interest to accrue and be credited annually from date of the maturity of this Certificate. The schedule on the following page specifically sets forth the amounts payable hereunder pro rata per $1,000 of the face amount of this Certificate. To ascertain the semi-annual, quarterly, or monthly payments divide the annual amount shown by two, four or twelve as the case may be. In the event the second party should elect to exercise either this option or the special settlement option given on the face of this Certificate, and during the life thereof request cash in full settlement, the amount payable shall be the then present worth of the unpaid installments computed from the last interest accrual date at 5½% interest per annum.

SCHEDULE OF SETTLEMENTS UNDER OPTION C.
ON BASIS OF $1,000.00 MATURITY VALUE

Number of Annual Payments	PAYMENTS TO BEGIN										
	At Maturity	1 Year After Maturity	2 Years After Maturity	3 Years After Maturity	4 Years After Maturity	5 Years After Maturity	6 Years After Maturity	7 Years After Maturity	8 Years After Maturity	9 Years After Maturity	10 Years After Maturity
1	$1,000.00	$1,055.00	$1,113.00	$1,174.00	$1,238.00	$1,307.00	$1,378.00	$1,454.00	$1,534.00	$1,619.00	$1,708.00
2	513.35	541.60	571.40	602.80	635.50	670.95	707.83	746.76	787.83	831.16	876.85
3	351.36	370.65	391.00	412.50	434.95	459.20	484.39	511.03	539.14	568.79	600.05
4	270.40	285.25	300.95	317.50	334.70	353.40	372.84	393.35	414.98	437.80	461.85
5	221.95	234.15	247.05	260.60	274.75	290.05	306.05	322.87	340.62	359.36	379.10
6	189.20	200.15	211.15	222.80	234.85	247.95	261.57	275.95	291.13	307.14	324.05
7	164.75	173.95	185.60	195.80	206.55	217.95	229.92	242.57	255.91	269.98	284.85
8	145.80	157.85	166.50	175.65	185.30	195.55	206.27	217.62	229.59	242.22	255.55
9	130.30	137.80	145.75	153.80	162.85	171.15	180.94	190.27	200.18	220.68	232.85
10	117.75	124.65	131.75	139.05	147.65	155.75	164.30	173.39	182.95	192.99	214.75
11	107.70	113.95	120.55	127.50	134.80	142.05	150.05	158.46	167.34	176.71	186.60
12	98.95	104.65	110.70	117.10	123.80	130.80	137.80	145.60	153.74	162.21	171.02
13	91.30	96.60	102.15	108.00	114.20	120.70	127.50	134.60	142.05	149.85	158.00
14	84.60	89.50	94.65	100.10	105.85	111.90	118.25	124.90	131.85	139.10	146.70
15	78.65	83.20	88.00	93.05	98.35	104.00	109.90	116.05	122.50	129.25	136.30
16	73.35	77.60	82.05	86.80	91.75	97.00	102.50	108.25	114.30	120.60	127.20
17	68.60	72.55	76.75	81.15	85.80	90.70	95.85	101.20	106.85	112.75	118.95
18	64.30	68.00	71.95	76.05	80.40	85.00	89.80	94.85	100.15	105.70	111.50
19	60.45	63.95	67.60	71.50	75.60	79.90	84.45	89.20	94.15	99.35	104.80
20	56.95	60.25	63.70	67.35	71.20	75.25	79.50	84.00	88.70	93.60	98.75

ASSIGNMENT
FOR VALUE RECEIVED, THE UNDERSIGNED, THE OWNER OF THE WITHIN CONTRACT, DOES HEREBY ASSIGN TO
OF STATE OF
THE SAID CONTRACT AND ALL RIGHTS ACQUIRED AND SUBJECT TO ALL TERMS, CONDITIONS AND AGREEMENTS THEREIN CONTAINED.
WITNESS MY HAND AND SEAL THIS DAY OF 19
IN THE PRESENCE OF
(SEAL)

ASSIGNMENT

For value received, the undersigned, the owner of the within contract, does hereby sell, assign, transfer, and set over to

_____ of _____ State of _____,

the said contract and all rights acquired and subject to all terms, conditions and agreements therein contained.

Witness my hand and seal this _____ day of _____ 19____

In the Presence of

_____ _____ *(SEAL)*

_____

This Assignment will not be valid until approved by the Syndicate and entered upon its books and a transfer fee of $1.00 is paid.

The above Assignment is made upon the books of the Syndicate and approved this _____ day of _____ 19____

_____ PRESIDENT.
SECRETARY.

ASSIGNMENT

For value received, the undersigned, the owner of the within contract, does hereby sell, assign, transfer, and set over to

_____ of _____ State of _____,

the said contract and all rights acquired and subject to all terms, conditions and agreements therein contained.

Witness my hand and seal this _____ day of _____ 19____

In the Presence of

_____ _____ *(SEAL)*

_____

This Assignment will not be valid until approved by the Syndicate and entered upon its books and a transfer fee of $1.00 is paid.

The above Assignment is made upon the books of the Syndicate and approved this _____ day of _____ 19____

_____ PRESIDENT.
SECRETARY.

10E

EXHIBIT "B"

FOUNDED 1894

INVESTORS SYNDICATE

INCORPORATED UNDER THE LAWS OF THE STATE OF MINNESOTA

MINNEAPOLIS, MINNESOTA

FIVE PER CENT. COUPON CERTIFICATE

For Value Received, the Investors Syndicate promises to pay to the registered owner hereof, at the expiration of TEN YEARS *from the date of this Certificate, upon its presentation and surrender to the Investors Syndicate, at its home office in Minneapolis, Minnesota,*

ONE THOUSAND DOLLARS

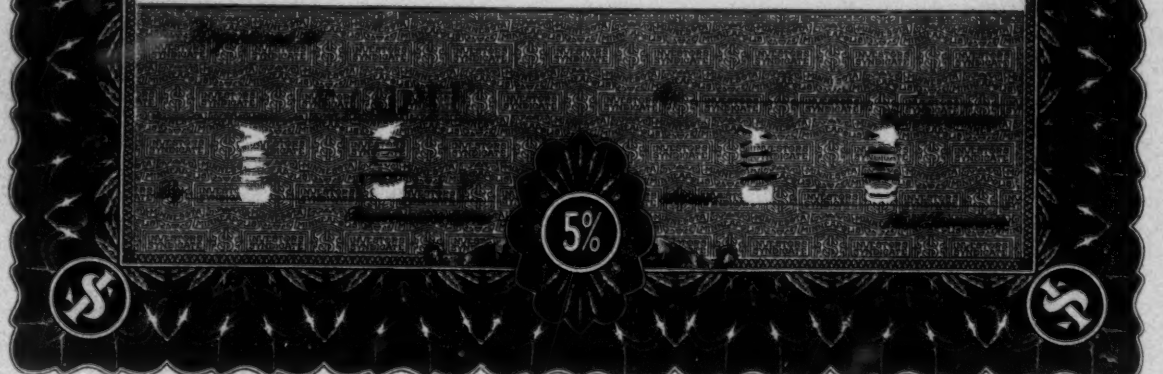
with interest thereon at the rate of five per centum per annum from date, on presentation and surrender of the annexed coupons payable to bearer as they severally become due, payable semi-annually at the home office of the Investors Syndicate at Minneapolis, Minnesota.

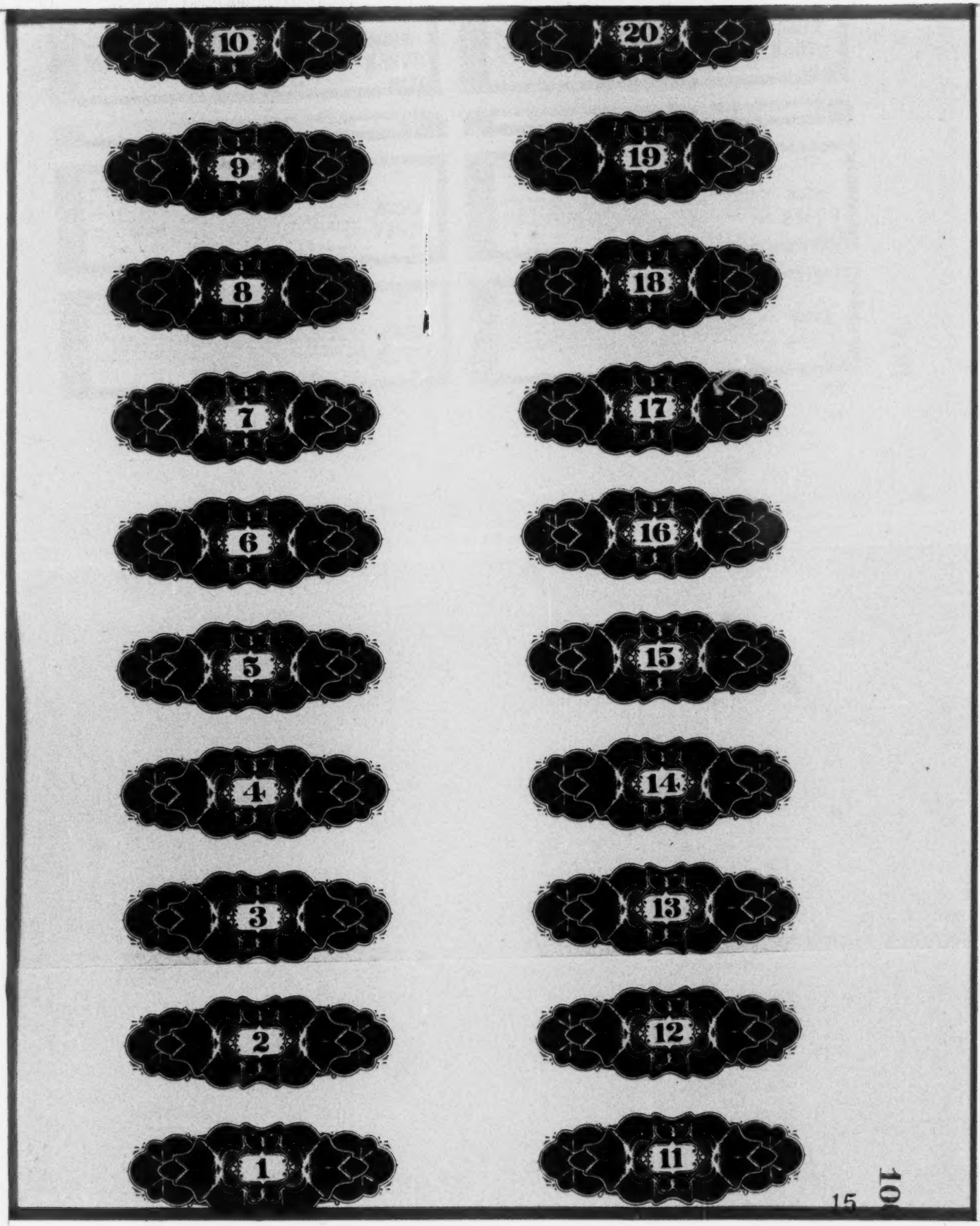
This Certificate and all unpaid coupons may be surrendered at any time and thereupon full face value will be paid to the registered owner, together with interest to the last interest paying date. The Investors Syndicate, if it so desires, may require ninety days notice from the registered owner hereof of the intention so to surrender this Certificate, and Investors Syndicate reserves the right at any time at its option to call in this Certificate by paying the registered owner the full amount thereof, together with accrued interest.

The Investors Syndicate agrees to keep and maintain at all times cash, United States Government Bonds and/or first mortgages on improved real estate in an amount equal to at least one hundred per centum of its liability hereunder and under all other like outstanding Certificates issued by it.

IN WITNESS WHEREOF, the Investors Syndicate has caused this Certificate to be executed by its proper officers thereunto duly authorized and its corporate seal affixed at its office in the City of Minneapolis, Minnesota, this SAMPLE *day of* _____ *19*__

Investors Syndicate,

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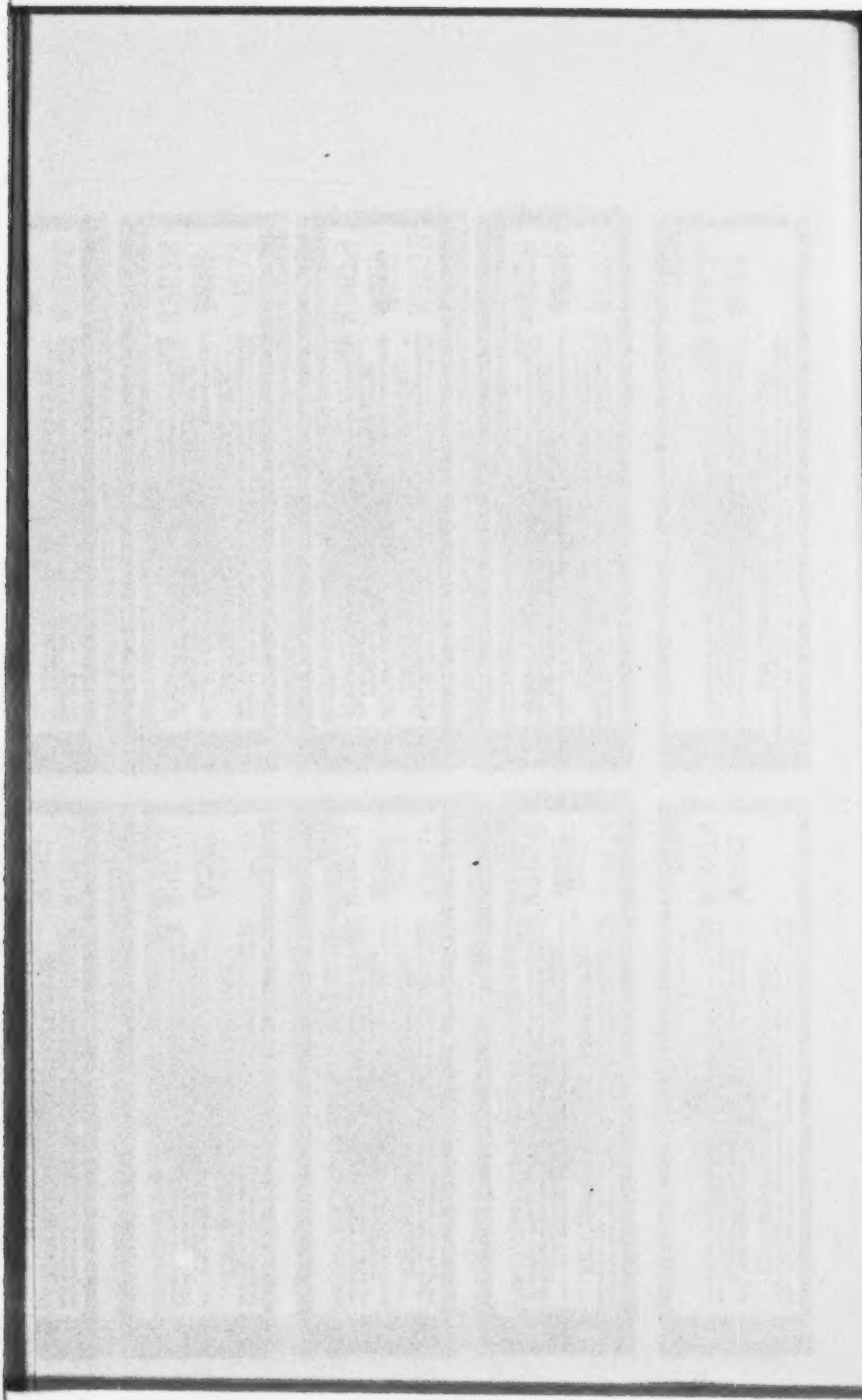
11

UNLESS THE CERTIFICATE HEREIN MENTIONED SHALL HAVE BEEN CALLED OR SURRENDERED FOR PREVIOUS REDEMPTION
INVESTORS SYNDICATE
$25.00
No M3678
No20
No19
No18
No17
No16
No15
No14
No13
No12
No11
No10
No9
No8
No7
No6
No5
No4
No3
No2
No1



[fols. 16 & 17] EXHIBIT "C" TO BILL OF COMPLAINT

No. 391

State of Montana, Investment Department, State Auditor's Office

Wm. Keating, Investment Comm.

This statement is to certify that the Investors Syndicate, with head offices at Minneapolis, Minnesota, has complied with the provisions of House Bill No. 325, Session Laws of 1913, which became a law and went into effect on March 13, 1913, and Chapter No. 179 Session Laws 1929, and that detailed information regarding it and the Securities offered by it for sale is on file in this office for public inspection and information, and said Investors Syndicate is permitted to do business in this state.

But this department in nowise recommends the above-named securities.

In witness whereof I have hereunto set my hand and affixed the official seal of this office the 8th day of January, 1930.

(Signed) Geo. P. Porter, State Auditor and Investment Commissioner ex-Officio. (Official Seal.)

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

AMENDMENTS TO BILL OF COMPLAINT—Filed June 26, 1931

Now comes the plaintiff and alleges, as amendments to its bill of complaint, to be designated as paragraphs X-A, X-B, X-C, and X-D, and to be inserted on page 6 of said bill of complaint after paragraph X:

X-A

That if the provisions of said Section 4043, authorizing the Investment Commissioner to revoke a permit granted

by him at any time for cause to him sufficient, is construed to authorize said Commissioner of revoke the permit issued to this plaintiff, because in his judgment the certificates which plaintiff is offering for sale do not promise or furnish a fair return to the investor, said provision is violative of and in conflict with the due process of law clause of the 14th Amendment, for the reason that it is not within the legislative power of the state to fix, determine, or otherwise regulate the return promised or furnished by such contracts, and the effect of the cancellation of such permit, for said reason, would be to deprive plaintiff of its liberty and property without due process of law.

[fol. 19] X-B

That if said Section 4045 is construed to authorize the Investment Commissioner to cancel the permit issued by him to plaintiff, because it appears to him that the plaintiff is conducting its business in an inequitable manner, for the reason that the certificates which plaintiff is offering for sale do not promise or furnish a fair return to the investor, the provision of said section authorizing the cancellation of such permit for such reason is in conflict with and violative of the due process of law clause of the said 14th Amendment, for the reason that it is not within the legislative power of the state to fix, determine, or regulate such return, and the effect of the cancellation of such permit for said reason would be to deprive plaintiff of its liberty and property without due process of law.

X-C

That the said rule or order is violative of the provision of Section 1 of Article V of the Constitution of Montana, which declares that "the legislative authority of the state shall be vested in a legislative assembly consisting of a senate and house of representatives" for the reason that the making and issuing of said rule and order is an exercise of legislative power.

X-D

That the said rule or order deprives plaintiff of its liberty and property, without due process of law, in violation of the 14th Amendment, for the reason that it is not within the power of the Investment Commissioner to cancel or revoke

the permit issued to plaintiff, because, in his judgment, or because it appears to him that the certificates plaintiff is offering for sale do not promise or furnish a fair return to the investor or because, in his judgment, or it appears to him, that the withdrawal privilege contained therein is inequitable or unfair.

[fols. 20-23] M. S. Gunn, Gunn, Rasch, Hall & Gunn, Solicitors for Plaintiff.

Service of the foregoing Amendments admitted and receipt of copy thereof acknowledged this 26th day of June, A. D. 1931.

L. A. Foot, Attorney General, for Defendant and Self. J. E. Erickson, Governor, by Will Aiken, Secretary.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

ANSWER—Filed June 29, 1931

Now comes the above named defendant and for his answer to the bill of complaint and amendment thereto on file herein admits, alleges and denies as follows:

I

Defendant admits as true the allegations contained in paragraph I of said Bill of Complaint.

II

Answering paragraph II of said Bill of Complaint, defendant admits that this is a suit of civil nature and the matter in controversy exceeds, exclusive of interests and costs, the sum or value of Three Thousand Dollars ($3,000.00) and is wholly between citizens of different states but denies that this is a suit arising under the Constitution of the United States.

III

Answering paragraph III of the said Bill of Complaint, this defendant admits upon information and belief, the matters and things therein set forth and alleges the fact to be that said plaintiff has been engaged in selling certain [fol. 25] stock and certificates to the general public in said state since the twenty-third day of March nineteen hundred and twenty-six, as is evidenced by License No. 291 filed in the office of the defendant.

IV

Answering paragraph IV of the said Bill of Complaint, this defendant admits as true the matters and things therein set forth.

V

Answering paragraph V of the said Bill of Complaint, this defendant admits as true the allegations, matters and things therein set forth, but denies that on the eighth day of January 1930, at the time of issuing said permit, plaintiff's Exhibit A attached and made a part of the Bill of Complaint herein was on file in said office, or that this defendant had any knowledge at the time of issuing of said permit of the contents of said Exhibit A, attached to and made a part of said Bill of Complaint.

VI

Answering paragraph VI of said Bill of Complaint the defendant admits as true the allegations, matters and things therein contained.

VII

Answering paragraph VII of said Bill of Complaint, this answering defendant admits as true the allegations, matters and things therein contained.

Defendant alleges that said findings of fact and order set forth in paragraph VII of said Bill of Complaint were made pursuant to a notice served upon the above named plaintiff and all other investment companies conducting similar business, and dated the seventh day of May 1931. The above named plaintiff and all others interested were notified that a hearing would be held by said investment

commissioner at his office at Two o'clock P. M. on the Twenty-third day of May 1931, at which time and place a hearing would be held relative to promulgating the order [fol. 26] set forth in the said paragraph seven of the said Bill of Complaint; at which time the above named plaintiff appeared and asked for further time up to and including the first day of June 1931 in which to appear, which request was granted; that an abstract of the proceedings had on said dates including the evidence offered and objections made and showing the appearances made by the various companies interested in said order, is hereto attached marked Exhibit A, and made a part hereof.

VIII

Answering paragraph VIII of said Bill of Complaint, answering defendant admits as true the allegations, matters and things therein set forth.

IX

Answering paragraph IX of said Bill of Complaint, this answering defendant denies that the provision of Section 4036 of the Revised Codes of Montana 1921 is in violation of, or repugnant to, or in conflict with Section I of Article XIV of the Amendments to the Constitution of the United States in the particulars as set forth in said paragraph, or otherwise or at all.

X

Answering paragraph X of said Bill of Complaint, this answering defendant denies that Section 4045 of the Revised Codes of Montana 1921 is in violation of, or repugnant to, or in conflict with the due process of law clause of the Fourteenth Amendment to the Federal Constitution in the particulars as therein set forth, or otherwise or at all.

X-A

Answering paragraph X-A in said Bill of Complaint, defendant denies each and every allegation made and matter and thing contained therein.

X-B

Answering paragraph X-B, defendant denies that said Section 4045 is in conflict with and in violation of the due

process of law clause of said Fourteenth Amendment in relation to the matters and things therein set forth or otherwise or at all.

[fol. 27]

X-C

Answering paragraph X-C defendant denies that said rule or order is violative of the provisions of Section I of Article V of the Constitution of Montana in relation to the matters and things therein set forth or otherwise or at all.

X-D

Answering paragraph X-D defendant denies that said rule or order is in violation of the Fourteenth Amendment in relation to the matters and things therein set forth or otherwise or at all.

XI

Answering paragraph XI of said Bill of Complaint this answering defendant denies that the said rule or order therein mentioned is arbitrary, unreasonable, illegal, in violation of, or in conflict with the due process of law clause of said Fourteenth Amendment therein referred to and denies that said rule will deprive plaintiff of its property, consisting of said permit, or the right to sell its certificates in the State of Montana, or of its liberty of making or entering into contracts evidenced thereby without due process of law and denies that said order will deny to plaintiff the equal protection of the law.

XII

Answering paragraph XII of the said Bill of Complaint, answering defendant admits in said Bill of Complaint that in 1930 the said plaintiff sold in the State of Montana, certificates of the maturity value of $2,141,200 and that there were approximately forty-five hundred holders of such certificates within the State. As to the other allegations, matters and things in said paragraph set forth, this answering defendant alleges he has no knowledge or information sufficient upon which to form a belief and therefor denies the same.

XIII

Answering paragraph XIII of said Bill of Complaint, [fol. 28] this answering defendant admits that the plain-

tiff's methods of selling certificates is by means of agents and that the plaintiff now has over twenty agents or salesmen in said state, all of whom have been duly licensed to sell certificates by said defendant. As to the other allegations, matters and things in said paragraph contained, this answering defendant alleges he has no knowledge or information sufficient to form a belief and therefor denies the same.

XIV

Answering paragraph XIV of said Bill of Complaint, this answering defendant denies that the penalty as provided by section 4049 of the revised codes of Montana 1921 for a violation of the provisions of said Blue Sky Law is in conflict with or repugnant to, or violative of the due process of law clause of the said Fourteenth Amendment, or denies this plaintiff equal protection of the law in violation of said amendment.

XV

Answering paragraph XV of said Bill of Complaint, this answering defendant alleges he has no knowledge or information sufficient to form a belief, and therefor denies the same.

XVI

Answering paragraph XVI of said Bill of Complaint, this answering defendant denies that said certificate marked Exhibit A and made a part of the plaintiff's Bill of Complaint was ever presented to or filed with this defendant prior to the issuance of said permit and alleges the facts to be that any permit or permits issued by this defendant approving contracts similar to Exhibits A and B attached to said Bill of Complaint were issued by this defendant inadvertently and through misapprehension and without knowledge of the unfair, unjust and inequitable plan of operation of said contracts, particularly as the same relate to the withdrawal provisions and penalties to which the owners and holders thereof are subjected.

[fol. 29] XVII

Answering paragraph XVII, defendant denies each and every allegation, matter and things therein contained.

XVIII

Wherefore your answering defendant prays that said Bill of Complaint be dismissed, and he goes hence with his costs.

Dated this 29th day of June, A. D. 1931.

—— ——, Attorney General, State of Montana; —— ——, Assistant Attorney General, State of Montana; Stewart and Brown, Resident- of Helena, Montana; J. W. Freeman, Resident of Great Falls, Montana, Solicitors for Defendant.

[fol. 30] *Duly sworn to by Geo. P. Porter. Jurat omitted in printing.*

[fol. 31] EXHIBIT "A" TO ANSWER

BEFORE THE INVESTMENT COMMISSIONER OF THE STATE OF MONTANA

In the Matter of Fixing the Maximum Amount of Withdrawal Penalty Allowable on Payments on Installment Bonds, Collateral Trust Certificates, Savings Certificates, and Instruments Creating a Debtor-creditor Relationship of Investment Companies

INVESTORS SYNDICATE, INSTALLMENT SECURITIES AGENCY, Incorporated; Universal Bond and Mortgage Corporation, International Guaranty Thrift Syndicate, Great Western Bond and Mortgage Corporation, Decker Mortgage Company, National Thrift Corporation of America, National Bond Corporation, National Mortgage Bond Corporation of Montana, United Bond and Finance Corporation

Order

Before Geo. P. Porter, State Auditor and ex Officio Investment Comissioner

Hearings held May 23 and June 1, 1931, at the State Capitol Building, Helena, Montana. The following appearances were made:

APPEARANCES

Investors Syndicate and Installment Securities Agency, Incorporated, H. W. Berg, Vice-President, and M. S. Gunn, Counsel.

Universal Bond and Mortgage Company, Paul Hudtloff, Vice-President; H. J. Fennimore, Director, and Frank Venable, Montana, Manager.

International Guaranty Thrift Corporation, F. M. Zimmers, President.

Great Western Bond & Mortgage Corporation, by written record.

Decker Mortgage Company, no appearances.

National Thrift Corporation of America, no appearances.

National Bond Corporation, R. M. Tone, President.

National Mortgage Bond Corporation of Montana, no appearances.

United Bond and Finance Corporation, Guy M. Miller, State Manager, and Earle Genzberger, Counsel.

The corporations cited to appear in this action were all engaged in selling in Montana installment certificates, bonds and other securities creating a debtor-creditor relationship on the installment plan. The general procedure is to sell certificates on the basis of One Thousand Dollars debenture at maturity, at the rate of approximately $6.25 [fol. 32] per month, with the security maturing at periods generally ranging from ten to eleven years. In computing the maturity value the interest rate offered varies from 5½% to 7%, which is included in the aggregate in determining the maturity value of the security. The character of the security ranges from promissory notes to bonds and in certain cases financial institutions act as trustees, but in others it has been the policy for the company to be the guarantor. These contracts carry a provision that no withdrawals will be permissable prior to periods ranging from 18 months to three years. Furthermore, the provisions of the contract provide that in the event a subscriber desires to withdraw and terminate his contract that the withdrawal value of said certificate shall be the amount paid in, less penalty ranging from 3½% to 8% of the matured value of the security. The penalty is ordinarily called a loading charge and the companies attempt to jus-

tify the same on the grounds that it is one of their methods of procuring funds for selling costs and general operation.

As an example of an aggravated case the Commissioner has a complaint from a subscriber who has paid $260.00 on a $2,500.00 contract and 26 payments of $10.00 each and upon his application to withdraw the company offered to return $60.15.

A portion of the Investment Companies in this action were operating in Montana prior to the enactment of the present Investment Act while others have filed with the Commissioner since that time.

The present period of depression has largely changed conditions and wage earners who were the principal subscribers for installment securities find themselves without positions and unable to continue payments on their contracts. The majority of the complainants seem to be of the opinion that they can withdraw their money and when exhorbitant penalties are imposed, the resultant effect is apparent.

This hearing resolves itself into two issues:

First, that installment companies shall make settlement with their subscribers at any time after the contract has been in effect one year, upon service of proper notice.

Second, that the maximum withdrawal penalty allowed [fol. 33] shall not exceed 3½% or $35.00 per thousand, of the face or matured value of the security.

Prior to the hearing the Commissioner served the following notice on each of the Investment Companies included herein:

NOTICE OF HEARING

"Complaints having been made to the Investment Commissioner that the penalties for withdrawals fixed by investment companies operating in the State of Montana are excessive, unfair, unjust, inequitable and oppressive, to its contributors as provided in Section 4036 of the Revised Codes of Montana, 1921,

Therefore, you, and each of you, are hereby notified that this Commission will at 2:00 o'clock p. m. on the twenty-third day of May, 1931, at the office of the Commissioner, at the State Capitol, at Helena, Montana, conduct a hearing relative to promulgating the following rule:

'In the interests of the investing public, any investment company operating in the State of Montana shall not issue,

sell or distribute, any bonds, certificates of indebtedness, collateral trust certificates or any other device whatsoever, that might be deemed a security creating a debtor-creditor relationship, which has a withdrawal privilege, before maturity, that does not provide for withdrawal of installments paid thereon due any time after the first year, if the owner or holder shall have given ninety (90) days notice in writing of his intention to make such withdrawal and such owner or holder shall be entitled to receive the total amount of all installments paid in, less only a withdrawal penalty not exceeding three and one-half (3½) per cent of the matured or face value of such securities, plus interest compounded annually at the rate at which said securities are guaranteed to mature or represented to pay at maturity; and provided further, that the bond or contract representing such security and the application for the same shall have printed thereon, the amount paid in, the withdrawal or surrender value thereof, and the loan value at the end of each year of its duration.

It is further provided that none of the above securities as enumerated shall be permitted to be sold in the State of Montana unless there is a withdrawal privilege provided each year beginning with the first year until maturity.'

You and each of you are hereby given an opportunity to appear and present any objections you may have as to the reasonableness of said proposed ruling.

Dated at Helena, Montana, this seventh day of May, 1931.

(Signed) Geo. P. Porter, State Auditor and ex Officio Investment Commissioner."

At the hearings the Commissioner briefly reviewed the purpose of the meetings and witnesses were duly sworn. The Deputy Investment Commissioner introduced in evidence a letter from the Great Western Bond and Mortgage [fol. 34] Corporation, as follows:

"Great Western Bond and Mortgage Corporation, 707 South Hill Street, Los Angeles, California

May 19, 1931.

Hon. George P. Porter, State Auditor & ex Officio Investment Commissioner, Helena, Montana.

DEAR SIR: As per your request of the 8th instant, we wish to acknowledge receipt of your notice of hearing with

respect to a ruling providing a loading charge of 3½ per cent on contracts or certificates issued by investment companies.

In reply thereto, we might state we are surprised to learn that this corporation has been included in this public hearing to be held on May 23rd, as we have voluntarily placed our loading charge at 3½ per cent. We do not wish to criticise as we are endorsers of such a ruling, but we feel that we should not be placed in the same category as the companies who are charging more than 3½ per cent, and brought out into the limelight with them on this hearing. You can very readily understand under these circumstances we might be criticised by the public and openly accused of making unfair deductions where in reality we have not.

In fairness to us some statement should be made at this hearing that we have not issued any installment certificates with a loading charge of more than Thirty Five dollars ($35.00) per thousand in order that we will not be unjustly criticised.

This is only a suggestion, Mr. Porter, which we trust will receive your kind consideration.

Wishing you success and assuring you of our co-operation at all times, with kindest personal regards, I beg to remain,

Respectfully yours, (Signed) Earl Lund, Earl Lund, President."

EL:DD.

In behalf of the Commissioner Exhibit "B", showing the cash or loan value of both the Universal Bond & Mortgage Corporation and the Great Western Bond and Mortgage Corporation, was introduced as follows:

EXHIBIT "B"

"Cash or Loan Values

Universal Bond & Mortgage Corporation

Monthly Payment, $6.30; Quarterly, $18.85; Semi-Annual, $37.50; Annual, $74.00

[fol. 35]

Year	
1st	$45.00
2nd	123.16

Year	
3rd	202.78
4th	287.92
5th	380.97
6th	488.11
7th	603.34
8th	727.81
9th	861.22
10th	1000.00

Great Western Bond & Mortgage Corporation

Monthly Payment, $6.30; Quarterly, $18.85; Semi-Annual, $37.50; Annual, $74.00

Year	
1st	$41.00
2nd	118.00
3rd	210.00
4th	302.00
5th	398.00
6th	499.00
7th	608.00
8th	730.00
9th	860.00
10th	1038.00"

It will be noted that both of these companies above mentioned, although parties to this action, do not charge in excess of 3½% withdrawal penalty.

There was also offered in evidence as Exhibit "C" a letter from Mr. C. H. Scott, President of the Prudential Bond & Mortgage Company, Inc., Little Rock, Arkansas, as follows:

EXHIBIT "C"

"Prudential Bond & Mortgage Company, Inc., Suite 318 Bankers Trust Building, Little Rock, Arkansas

May 19, 1931.

Mr. George C. Porter, State Auditor & ex Officio, Securities Commissioner, Helena, Montana.

DEAR MR. PORTER: You are to be congratulated on account of the courageous stand you are taking in regard to

monthly installment savings certificates or any other indebtedness of any corporations or investment firms selling a monthly savings contract with a prohibitive, unfair acquisition cost.

Most of the purchasers of these monthly installment savings certificates are made up of school teachers, railroad employees and salaried men and women who still buy a [fol. 36] whole lot on what the salesmen have to say. I think I am safe in saying that only one out of ten realize that some of these companies have on acquisition cost as high as $72 per $1000. They buy in good faith hoping to carry it to maturity, but little do they dream that if something should happen in 14 to 16 months that he or she would not have a dollar cash value built into their contract. There have actually been thousands of purchasers deceived by salesmen representing contracts of this character.

I sold building and loan stock for seven years before organizing the Prudential Bond and Mortgage Company three years ago. I never did receive but one per cent of the maturity value, or $10 per $1000. About five years ago I was offered the State of Arkansas by two thrift companies promising me $45 per $1000 but I told our Commissioner that before I would sell securities with that kind of acquisition cost that I would go into some other business as an individual could not build up good will and retain the respect of his fellow-men in selling contracts with an acquisition cost of $67.50 or $72 per $1000. The acquisition cost is not only prohibitive but most of the contracts are most deceptive. They have to be in order for the salesmen to sell any large volume.

It would be a great move on your part if you would write every Commissioner or Department which supervises securities telling them of the decisive stand that you have taken and give them your ideas. I think that most Commissioners would realy take the stand that you have if they realized how many purchasers were actually deceived by the salesmen.

The enclosed bond of the Prudential has an acquisition cost of two per cent of the maturity value, which is $20.00 per $1000. This contract is very simple and most all purchasers can absolutely understand what they have bought. The Table of Values shows the cash or surrender value at

the end of each year after 12 months but we have a cash value even before the 12 months. It takes most of the first three monthly payments to absorb the two per cnt acquisition cost. In other words, on the $1000 contract the purchaser would pay in $87.72 the first 12 months, plus 5½% interest, compounded semi-annually, or $1.60, totalling $89.32, less $20.00 per $1000 leaving a cash value of $69.32.

I have had enough experience with this contract to convince me if we were to operate in other states that possibly we would have to raise our acquisition cost to 2½ or 3½ per cent as you have suggested in your proposal.

I am not sending you this copy for the purpose of wanting to qualify in your state but I am most interested in the stand you have taken as I have specialized in selling savings accounts for ten years.

I would greatly appreciate a complete report of your meeting and only hope that I will be advised that you will mail this to all Commissioners and all the Attorney-Generals.

Any courtesy extended in this matter will be greatly appreciated.

Yours very truly, (Signed) C. H. Scott, President."

[fol. 37] There was further testimony to the effect that withdrawal penalties in the past, imposed by installment companies operating in the State of Montana, have ranged from 3½% to 8% of the face value of the matured obligation and that these charges were considered highly oppressive and the plan of business unsound, unjust and inequitable to the contributor thereto.

Mr. Frank Venable, Montana Manager of the Universal Bond and Mortgage Corporation, testified as follows:

"I am authorized by the Universal Bond and Mortgage Corporation, a Delaware corporation, with home office in Portland, Oregon, to state that having never charged as much at 3½% withdrawal value on our contracts, we have no objection to the present ruling as proposed by the Investment Commissioner and our present permit, as we understand, has been granted to us on that basis.

We shall be glad to continue to operate on that basis and to cooperate with your department in that ruling."

Mr. P. C. Bulen, President of the Mountain States Building and Loan Association, Great Falls, Montana, testified and introduced as an exhibit a contract entered into between C. Everett or Carrie Davis and an Investment Company, for a $10,000.00 installment thrift bond contract. He stated that at the end of 36 months the subscribers had paid in $1260.00 and that the withdrawal value at the end of three years was $626.00, leaving a loading charge, exclusive of accrued dividends and interest, of $624.00. In other words, at the end of 36 months the loss to the subscribers was $624.00.

In Protest to the Promulgation of the Proposed Ruling

Mr. Guy M. Miller, State Manager of the United Bond and Finance Corporation, issued a protest to the proposed ruling and testied that his company exacted a loading charge of 5%, or $50.00, per thousand on securities sold. This charge is prorated by a payment of 3%, or $30.00, per thousand to the salesman, ½% or $5.00 to the local sales-manager and an additional ½% or $5.00 to the State Manager. He further testified that he did not know what disposition the company made of the remaining 1% or $10.00 per thousand.

[fol. 38] Mr. Genzberger of Butte, Counsel for the same company, also protested the proposed ruling. Mr. Genzberger introduced in evidence Permit #310 of the State Investment Commissioner, dated March 1, 1928, by virtue of which the company was authorized to transact business in Montana. He further testified that the United Bond and Finance Corporation allowed a withdrawal privilege after 24 months, and that an investor may withdraw all the money he has paid in approximately 54 months after maturity, with deductions for the so-called loading charge, the withdrawal value for that period being $555.60, upon which $540.00 has been paid by the subscriber.

Mr. F. M. Zimmers, President of the International Guaranty Thrift Corporation, on behalf of his company said that as a matter of record and for the purpose of reserving all legal rights he desired to be recorded as protesting the

promulgation of the proposed rule. He further stated that one of the most serious features of the rule would be the allowance of withdrawals at the end of one year, and that it would provide the salesman with weapons to make these sales without stating all of the facts. Mr. Zimmers further stated that his company had had but one withdrawal during the previous year from Montana.

Mr. R. M. Tone, President of the National Bond Corporation, testified that his concern was the only domestic company operating in the state. He stated that he felt that all companies should be at liberty to make their own contracts and that he was opposed to withdrawals and the promulgation of this ruling. The National Bond Corporation, under their new contracts, exacted a 5% loading charge.

Mr. H. W. Berg, Vice-President of the Investors Syndicate, testified that in the event the order proposed should be promulgated his company would be forced to litigate or stop operations in the state as the Investors Syndicate could not issue a contract of this kind with safety. He stated the present withdrawal value of their contract at the end of 18 months was $42.00, or, in other words, there was a loading charge of 7.4%. He further testified that their contract was a 10 year contract and not a one year [fol. 39] arrangement and if the commissioner was passing on the basis of one year he would agree with him as to its unfairness. The loading charge of the Investors Syndicate on a thousand dollars was distributed as follows: $45.00 included sales costs, which provided for salesmen's commissions, advertising, a stamp tax of 50¢ per thousand, accountancy, rent and clerical hire. The sum of $12.00 is set aside for hearings, legislation and the death and disability provisions of the contract and certain other incidentals. The amount of $17.00 is set aside for a reserve fund.

The Investors Syndicate has approximately ten million in contracts in effect in Montana and for the year 1930 the cash receipts from the state were $309,456.02, represented in 4437 certificates in force at the end of the year. There were 802 certificate lapsations during the year, representing 18% of the certificates in force and 15% of the total face amount in force. Of this total of 802 certificates 73% at the time of exit had paid but three months or less on their contracts and 75% of the group had made only one

monthly payment and 21 certificates only had been in effect more than one year at the time of the lapsation. Witness further testified that the company paid between $500.00 and $600.00 in taxes in Montana each year.

Mr. M. S. Gunn, appeared on behalf of the Investors Syndicate and Installment Securities Agency, Incorporated, Minneapolis, Minnesota, and vigorously opposed the proposed ruling. Mr. Gunn's attack was principally on the grounds of the power of the Commissioner to prescribe a form of contract and he read into the record the decision in the case of investors Syndicate vs. Becker, Secretary of State of Missouri, et al., in which a restraining order was granted by the federal court of the Central Division of the Western District of Missouri, which court granted a restraining order preventing the state from exercising certain supervision over the complainant. Counsel also cited Investors Syndicate vs. Porter, Commissioner of Finance of the State of Idaho and tried in the federal court of Idaho. He further stated in his opinion that the Commissioner had no authority to enforce the proposed ruling but admitted in a later action that the Idaho Investment Commissioner [fol. 40] had revoked their license for failure to file certain reports and that the action was sustained in the federal court of Idaho.

FINDINGS AND ORDER

1. The Commissioner maintains that Section 4043 of the Revised Codes of Montana, 1921, confers authority for the promulgation of the proposed rule in the following language:

"* * * The Investment Commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock brokers, domestic or foreign, licensed under this act."

2. The Commissioner believes that the provisions of Section 4036, Revised Codes of Montana, 1921, providing in part:

"* * * Such permit, however, shall be subject to revocation at any time by the Investment Commissioner for cause to him sufficient."

clearly gives the Commissioner authority to cancel permits.

3. That the above mentioned provision of law impliedly gives to the Commissioner the right to impose a lesser penalty, namely, the removal of all unfair provisions in contracts.

4. That Section 4045 of the Revised Codes of Montana, 1921, provides in part as follows:

"Revocation of Permits and Appointment of Receiver.—Whenever, it shall appear to the investment commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable, or unauthorized manner, or is jeopardizing the interests of its stockholders or the investors in stocks, bonds or other securities by it offered for sale, or whenever any investment company shall refuse to file any papers, statements, or documents required under this Act, or shall refuse to permit an examination by said investment commissioner, or his deputies or agents, as provided in this Act, without giving satisfactory reasons therefor, said investment commissioner shall at once cancel its permit. * * *"

The Commissioner believes that a loading charge of from 5% to 8% is highly inequitable as this term is defined in this section.

5. That it is unreasonable and inequitable to maintain that investment companies who were operating in Montana [fol. 41] prior to the enactment of the present investment act should not be amenable to the same reasonable and lawful supervision and control by this Commissioner as exercised on companies coming under his supervision at a later date.

6. That this Commissioner is continually receiving complaints to the effect that agents of investment companies misrepresent to prospective purchasers either by not stating the provisions relating to withdrawals or by alleging that investors can procure their money at any time.

7. That in justice to the investing public, during the period of depression, they should not be unreasonably penalized for conditions beyond their control, caused by unemployment or depreciation of commodity values.

8. That the proposed rule is a reasonable one as evidenced by its adoption by certain of the investment companies operating in this state and by testimony produced at the hearing.

9. That a maximum withdrawal penalty of 3½% is amply sufficient in case of forfeiture of investment installment contracts and that withdrawals should be permissable at any time after one year.

It is therefore ordered that from and after the 22nd day of July, 1931, the following rule shall be in full force and effect:

"In the interests of the investing public, any investment company operating in the State of Montana shall not issue, sell or distribute, any bonds, certificate of indebtedness, collateral trust certificates or any other device whatsoever, that might be deemed a security creating a debtor-creditor relationship, which has a withdrawal privilege, before maturity, that does not provide for withdrawal of installments paid thereon due any time after the first year, if the owner or holder shall have given ninety (90) days notice in writing of his intention to make such withdrawal and such owner or holder shall be entitled to receive the total amount of all installments paid in, less only a withdrawal penalty not exceeding three and one-half (3½) per cent of the matured or face value of such securities, plus interest compounded annually, at the rate at which said securities are guaranteed to mature or represented to pay at maturity; and provided further, that the bond or contract representing such security and the application for the same shall have printed thereon, the amount paid in, the withdrawal or surrender value thereof, and the loan value at the end of each year of its duration.

It is further provided that none of the above securities as enumerated shall be permitted to be sold in the State [fols. 42 & 43] of Montana unless there is a withdrawal

privilege provided each year beginning with the first year until maturity."

Dated at Helena, Montana, this 22nd day of June, 1931.
Geo. P. Porter, State Auditor and ex Officio Investment Commissioner.

CPC/ME.

[File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

Present: Hon. William H. Sawtelle, U. S. Circuit Judge; Hon. Geo. M. Bourquin, U. S. District Judge, and Hon. Charles N. Pray, U. S. District Judge

MINUTE ENTRY OF HEARING—June 29, 1931

This cause came on regularly for hearing this day on Plaintiff's application for an interlocutory injunction herein, Mr. M. S. Gunn appearing for plaintiff, and Mr. J. W. Freeman and Mr. T. H. MacDonald, assistant Attorney General of Montana, appearing for defendant.

Thereupon, on motion of Mr. Gunn, the Court ordered that Mr. A. C. Spencer, of Portland, Oregon, be admitted to practice for the purposes of this case and his name entered as associate counsel for plaintiff.

Thereupon, an answer was filed herein by the defendant, whereupon, it was stipulated and agreed by counsel for the respective parties, that the cause be heard and submitted to the court at this time for final determination.

Thereupon, counsel stipulated in open court that the form of certificate attached to the complaint and marked exhibit "A" was not before the Investment Commissioner at the time he issued the permit, but was later approved by letter of February 18, 1930, a form of the certificate approved by issuance of the permit, together with a copy of the aforesaid letter, was introduced as a part of this stipulation.

Thereupon the cause was duly argued by counsel for respective parties and submitted and by the court taken

under advisement, brief being filed at this time by the plaintiff, the defendant being granted five days to file his brief and the plaintiff granted five days thereafter for reply brief.

Thereupon, counsel for plaintiff moved the court to grant a restraining order, as prayed for in the complaint, in the event this case is not decided by July 22, 1931, the date that the order of the Investment Commissioner is made effective.

Entered in open Court June 29, 1931.

C. R. Garlow, Clerk.

[fol. 45] That on June 29, 1931, the copy of letter and certificate referred to in the oral stipulation in the foregoing copy of minute entry was introduced, being as follows, to wit:

February 18th, 1930.

Investors Syndicate, 100 North Seventh St., Minneapolis, Minn.

GENTLEMEN: This is to advise you that we have this day approved your new Installment Investment Certificate presented this department by Mr. M. S. Gunn, of the law firm of Gunn, Rasch, Hall & Gunn, of Helena, Montana.

Yours very truly, —— ——, State Auditor & ex-Officio Investment Commissioner.

CBA-ZB.

(Here follows accumulative installment certificate, side folios 46 and 47)

AMERICAN BANK NOTE COMPANY, LITHO.

46

324

United States of America

FOUNDED 1894

INVESTORS SYNDICATE

INCORPORATED UNDER THE LAWS OF THE STATE OF MINNESOTA

MINNEAPOLIS, MINNESOTA

ACCUMULATIVE INSTALLMENT CERTIFICATE

This is to Certify that in consideration of the payment of _____ Dollars, annually in advance during the period of ten years from date hereof, the Investors Syndicate, first party, hereinafter referred to as the Company, hereby promises to pay to

_____

of _____, hereinafter referred to as the second party, at the expiration of said period, upon presentation and surrender of this Certificate to the Company at its office in the City of Minneapolis, Minnesota, the sum of _____ Dollars.

This Certificate is subject to the privileges, terms and conditions on the second, third and fourth pages hereof which are hereby referred to and made a part hereof, as fully as if set forth in the face of this Certificate.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed in its corporate name at Minneapolis, Minnesota, this _____ day of _____ 19__

Investors Syndicate,

By _____
President

5½%

32A

PRIVILEGES AND CONDITIONS

1. SECURITY. The company agrees to keep and maintain at all times first mortgages on improved real estate, cash and government bonds in an amount equal to at least $110 for each $100 of its liability hereunder and under all other like outstanding Certificates issued by it, said liability being the cash value as shown in Paragraph 3, less the amount of any loans made thereon.

2. PAYMENTS. In lieu of annual payments, the second party shall have the right to make monthly payments of $6.30, quarterly payments of $18.85, or semi-annual payments of $37.50 on each $1,000 of the face amount hereof, the first payment to be made on the date of the Certificate, and subsequent payments to be made thereafter at or before the beginning of each monthly, quarterly or semi-annual period, as the case may be, time being the essence hereof.

3. CASH AND LOAN VALUE. After this Certificate has been in force for any of the periods shown in the following schedule exclusive of any period or periods of default, and at the end of the periods shown, it shall upon surrender of this Certificate, have a cash value for such period for each $1,000 face amount according to such schedule, or the company will upon deposit of this Certificate as collateral, lend the second party for each $1,000 face amount the loan value according to such schedule:

18 months	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs.
$38.50	$78	$160	$247	$339	$450	$567	$690	$818	$1,000

4. DEATH AND PERMANENT TOTAL DISABILITY. In the event of the death of the second party, this Certificate being in force and uncancelled on the books of the company, his legal representatives may elect (a) to continue this Certificate by making payments thereon, or (b) to surrender the same and accept the full amount paid hereon with interest at the rate of 4% per annum compounded annually, computed on sums from dates paid to date of death, subject to the provisions of Paragraph 10 hereof. Should the second party, as a result of sickness or injury, become totally and permanently disabled before he attains the age of sixty years, and unable to engage in any gainful occupation for the balance of his life, he shall be entitled to the benefits stated in the preceding sentence of this paragraph, interest being computed on sums from dates paid to date when second party first becomes so totally and permanently disabled. No sums will be payable until the company has received legal proof of death or the proof of permanent total disability required by it. If this Certificate is issued in the name of one person for the benefit of another, the second option (b) herein shall apply only in the event of the death or such permanent total disability of the first person but the proceeds shall belong to the beneficiary.

5. PAID UP CERTIFICATE. After this Certificate has been in force for any of the periods shown in the following schedule exclusive of any period or periods of default, the second party shall for such period, upon written request and surrender of this Certificate, receive a Paid Up Certificate due at the then maturity date of this Certificate, in the amount for each $1,000 face amount, according to the following schedule:

18 months	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.
$80	$119	$232	$340	$443	$557	$665	$768	$863

After this Certificate has attained a cash value, and the second party has failed for a period of two years to make a payment due, the company will, upon written request of the second party or at its own option, cancel this Certificate and issue in lieu thereof a Paid Up Certificate After Default in an amount equal to the then cash value of this Certificate plus interest at 5½% per annum for ten years compounded annually, due ten years from date written request is received, or the option exercised.

6. NON-FORFEITURE CLAUSE. This Certificate may be reinstated at any time by resuming monthly or other specified payments if default has continued for less than two years, but no interest will be allowed hereon during the period of default and, in the event of such resumption of payments, the maturity hereof and the due date of remaining payments shall be extended for a period equal to the time default continued. Notwithstanding that default has continued for a period of two years or more, this Certificate not having attained a cash value, the rights of the second party are not thereby forfeited, but said second party, so long as the Company is engaged in issuing like Certificates, upon the resumption of payments and upon written request and surrender of this Certificate, and the payment of a

reissuance charge of $1.00, shall be entitled to a new Installment Certificate of the kind and rate then being issued as of that date and of like face amount, and to credit in full for all payments made hereon, provided that no part thereof shall be construed as advance payments. Provided further, that if this Certificate has not attained a cash value and default continues for a period of two years, then except as to the right to receive a new Certificate as hereinabove set forth with sums credited thereon, all rights of the second party including the right to sums paid shall cease and determine, and the Certificate shall be of no further force and effect.

7. REINSTATEMENT. In the event the second party shall reinstate this Certificate after default by resuming payments and shall thereafter make up such defaulted payments and apply for the maturity, cash or loan value, he shall be entitled to receive the then present worth of such maturity, cash or loan value for the time paid for computed at 7% per annum for the period from date such loan, cash or maturity value is paid, to the extended due date as specified in Paragraph 6 herein.

8. ADVANCE PAYMENTS. Advance payments in excess of the current year's requirements shall increase the cash and loan value as shown in Paragraph 3 hereof by the amount of such excess plus interest at 5½% compounded annually; whenever the advance payments with interest, and the installment with interest, shall equal the maturity value of the Certificate, then the company will pay semi-annually, interest in cash at 5½% per annum to second party, his heirs or assigns, until maturity. Excess payments shall be applied by the company on annual payments when they become due.

9. ASSIGNMENT. This Certificate if in force and uncancelled on the books of the company may be assigned, but the assignment or transfer hereof shall not be valid without the consent in writing endorsed hereon by the company and a transfer fee of $1.00 paid to the company; provided that in case of assignment the permanent total disability benefits shall apply only if such permanent total disability occurs to the assignee wholly after the assignment is endorsed by the company hereon.

10. MISCELLANEOUS. No agent or other person has authority to alter or change the terms of this Certificate, or bind the Company by any statement, written or oral, not herein contained. Unless otherwise ordered by the Board of Directors of the Company, a sum not to exceed 50% of the total cash receipts received during the current calendar month may be used for paying the cash, death and disability values, optional settlements, and for making loans under this and like Certificates. It is agreed that any such payments shall be paid by the Company in the order of application therefor.

The Company shall have the right at all times to call in this Certificate and cancel the same by paying the second party the full amount paid hereon together with interest at 5½% compounded annually for the time the company has had the use of the money, less any indebtedness due the company, and shall have a like right to call in and pay off any Certificate issued in lieu hereof or the optional settlements herein by paying the then present worth computed on the basis of 5½% compounded annually, less any loans made thereon.

11. CASH IN FULL GUARANTEED AT MATURITY. Anything in this Certificate to the contrary notwithstanding, the second party shall at the time of maturity be entitled to receive, and the company guarantees then to pay in cash the face amount hereof less any indebtedness due the company.

12. OPTIONAL SETTLEMENT AT MATURITY. The second party may elect in lieu of cash when this Certificate matures, either of the following settlements, by notifying the company of his election prior to maturity and having such election endorsed by the company on this Certificate.

OPTION A. Leave the cash with the company and the company agrees to keep and maintain the same class of security as specified in paragraph one in an amount not less than its liability, and to pay interest at 5½% per annum at the end of each six months, or if interest is allowed to accumulate, all sums will be compounded annually. At any time after maturity the second party may request final settlement, and upon request principal and accrued interest will be paid by the company.

OPTION B. Leave the cash with the company and the company agrees to keep and maintain the same class of security as specified in paragraph one in an amount not less than its liability, and should the second party elect to exercise this option, the company agrees to pay the face value and interest in annual, semi-annual, quarterly or monthly payments as per the schedule on the following page. To ascertain the semi-annual, quarterly or monthly payments divide the annual amount shown by two, four or twelve as the case may be. In the event the second party should elect to exercise this option and during the life thereof request cash in full settlement, the amount payable shall be the then present worth of the unpaid installments computed at 5½% interest per annum. The schedule on the following page shall apply pro rata per $1,000 of the face amount of this Certificate.

SCHEDULE OF OPTIONAL SETTLEMENTS
ON BASIS OF $1,000.00 MATURITY VALUE

Number of Annual Payments	Payments to Begin						
	At Maturity	1 year after Maturity	2 years after Maturity	3 years after Maturity	4 years after Maturity	5 years after Maturity	10 years after Maturity
1	$1,000.00	$1,055.00	$1,113.00	$1,174.00	$1,238.00	$1,307.00	$1,708.00
2	513.35	541.60	571.40	602.80	635.50	670.95	876.85
3	351.30	370.65	391.00	412.50	434.95	459.20	600.05
4	270.40	285.25	300.95	317.50	334.70	353.40	461.85
5	221.95	234.15	247.05	260.60	274.75	290.05	379.10
6	189.70	200.15	211.15	222.80	234.85	247.95	324.05
7	166.75	175.95	185.60	195.80	206.55	217.95	284.85
8	149.60	157.85	166.50	175.65	185.30	195.55	255.55
9	136.30	143.80	151.75	160.05	168.85	178.15	232.85
10	125.75	132.65	139.95	147.65	155.75	164.30	214.75
11	117.10	123.55	130.35	137.50	145.05	153.05	200.05
12	109.95	116.00	122.40	129.10	136.20	143.60	187.85
13	103.95	109.65	115.70	122.05	128.75	135.75	177.55
14	98.80	104.25	110.00	116.05	122.40	129.15	168.80
15	94.40	99.60	105.10	110.85	116.95	123.30	161.30
16	90.55	95.55	100.80	106.35	112.20	118.30	154.70
17	87.20	92.00	97.10	102.40	108.05	113.90	149.00
18	84.25	88.90	93.80	98.95	104.35	110.05	143.95
19	81.65	86.15	90.85	95.85	101.10	106.65	139.45
20	79.30	83.65	88.25	93.10	98.20	103.55	135.45

ASSIGNMENT

For value received, the undersigned, the owner of the within contract, does hereby assign to

_____ of _____ State of _____,

the said contract and all rights acquired and subject to all terms, conditions and agreements therein contained.

Witness my hand and seal this _____ day of _____ 19____

In the Presence of

_____ _____

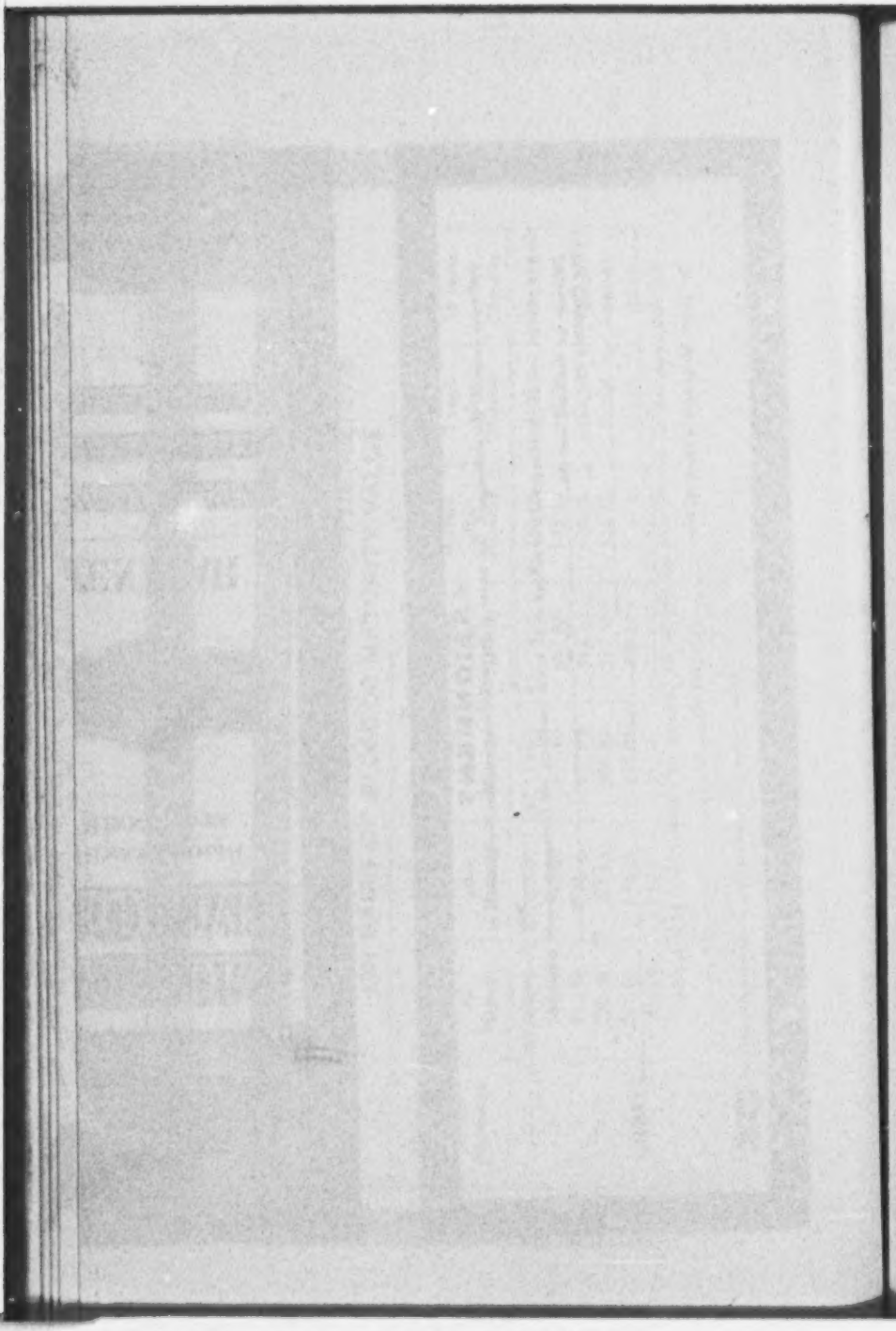
_____ _____ *(SEAL)*

This Assignment will not be valid until approved by the Company and a transfer fee of $1.00 is paid.

The above Assignment is approved this _____ day of _____ 19____

_____
PRESIDENT.

_____
SECRETARY.



[fols. 48-51] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

OPINION—Filed Aug. 18, 1931

PRAY, D. J.:

This is a suit in equity brought by Plaintiff against defendant as Auditor and ex officio Investment Commissioner of the State of Montana seeking injunctive relief against threatened cancellation of a permit to do business in this state, regularly issued by the latter to the former under the Blue Sky Law.

Plaintiff was incorporated under the laws of Minnesota in 1894 and authorized to engage in the business of selling certain investment certificates in that state and elsewhere; it has been so engaged in business in the State of Montana continuously since January 1930 under such permit. According to the terms of the investment certificate payment in a certain sum to the holder thereof is to be made at the expiration of the time stated therein, providing the holder makes the required payments during a certain period of years. The form of certificate was approved by the Investment Commissioner. Section 4036 of the Revised Codes of Montana, authorizing the issuance of the permit reads as follows:

"It shall be the duty of the investment commissioner to examine the statements and documents so filed, and if said investment commissioner shall deem it advisable, he shall make or have made a detailed examination, audit or investigation of such investment company's affairs; providing, that such investment company may at its option, in writing, refuse to have such investigation made, in which event said investment commissioner shall reject its application. If he finds that such investment company is solvent, that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business, and proposed contracts contain and provide for a fair, just, and equitable plan for the transaction of business, and in his judgment promises a fair return on the stocks, bonds, or other securities by it offered for sale, the investment com-

mission shall issue to such investment company a statement entitling it to sell such securities in the state of Montana, and reciting that such company has complied with the provisions of this act, that detailed information in regard to [fol. 52] the company and its securities is on file in the investment commissioner's office, and that such investment company is permitted to do business in this state; and such statement shall also recite in bold type that the investment commissioner in nowise recommends the securities to be offered for sale by such investment company. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause to him sufficient. But if said investment commissioner finds that such articles of incorporation or association, charter, constitution, and by-laws, plan of business, or porposed contract contain any provision that is unfair, unjust, inequitable, or oppressive to any class of contributors, or if he decides from his investigation or examination of its affairs that said investment company is not solvent, or does not intend to do a fair and honest business, or in his judgment does not promise a fair return on stocks, bonds, or other securities by it offered for sale, then he shall not grant such company a permit as herein provided, and shall notify said company in writing of his decision."

June 22nd, 1931, the Investment commissioner issued an order, addressed to this plaintiff, and other investment companies doing business in Montana, which is as follows:

"It is therefore ordered that from and after the 22nd day of July, 1931, the following rule shall be in full force and effect: In the interests of the investing public, any investment company operating in the State of Montana shall not issue, sell or distribute, any bonds, certificate of indebtedness, collateral trust certificates or any other device whatsoever, that might be deemed a security creating a debtor-creditor relationship, which has a withdrawal privilege, before maturity, that does not provide for withdrawal of installments paid thereon due any time after the first year, if the owner or holder shall have given ninety (90) days notice in writing of his intention to make such withdrawal and such owner or holder shall be entitled to receive the total amount of all installments paid in, less only a with-

drawal penalty not exceeding three and one-half (3½) per cent of the matured or face value of such securities, plus interest compounded annually, at the rate at which said securities are guaranteed to mature or represented to pay at maturity; and provided further, that the bond or contract representing such security and the application for the same shall have printed thereon, the amount paid in, the withdrawal or surrender value thereof, and the loan value at the end of each year of its duration.

It is further provided that none of the above securities as enumerated shall be permitted to be sold in the State of Montana unless there is a withdrawal privilege provided each year beginning with the first year until maturity.

Dated at Helena, Montana, this 22nd day of June, 1931.

Geo. P. Porter, State Auditor and ex Officio Investment Commissioner."

That the for-going order is based upon a certain preamble or so-called "Findings" of the Investment Commissioner in the following language:

"1. The Commissioner maintains that Section 4043 of the Revised Codes of Montana, 1921, confers authority for [fol. 53] the promulgation of the proposed rule in the following language: "* * * The Investment Commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock brokers, domestic or foreign, licensed under this act."

2. The Commissioner believes that the provisions of Section 4036, Revised Codes of Montana, 1921, providing in part: "* * * Such permit, however, shall be subject to revocation at any time by the Investment Commissioner for cause to him sufficient." clearly gives the Commissioner authority to cancel permits.

3. That the above mentioned provision of law impliedly gives to the Commissioner the right to impose a lesser penalty, namely, the removal of all unfair provisions in contracts.

4. That Section 4045 of the Revised Codes of Montana, 1921, provides in part as follows: "Revocation of permits and appointment of receiver. Whenever, it shall appear to the investment commissioner that the assets of any in-

vestment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable, or unauthorized manner, or is jeopardzing the interests of its stockholders or the investors in stocks, bonds or other securities by it offered for sale, or whenever any investment company shall refuse to file any papers, statements, or documents required under this Act, or shall refuse to permit an examination by said investment commissioner, or his deputies or agents, as provided, in this act, without giving satisfactory reasons therefor, said investment commissioner shall at once cancel its permit. * * *" The Commissioner believes that a loading charge of from 5% to 8% is highly inequitable as this term is defined in this section.

5. That it is unreasonable and inequitable to maintain that investment companies who were operating in Montana prior to the enactment of the present investment act should not be amenable to the same reasonable and lawful supervision and control by this Commissioner as exercised on companies coming under his supervision at a later date.

6. That this Commissioner is continually receiving complaints to the effect that agents of investment companies misrepresent to prospective purchasers either by not stating the provisions relating to withdrawals or by alleging that investors can procure their money at any time.

7. That in justice to the investing public, during the period of depression, they should not be unreasonably penalized for conditions beyond their control, caused by unemployment or depreciation of commodity values.

8. That the proposed rule is a reasonable one as evidenced by its adoption by certain of the investment companies operating in this state and by testimony produced at the hearing.

9. That a maximum withdrawal penalty of 3½% is amply sufficient in case of forfeiture of investment installment contracts and that withdrawals should be permissable at any time after one year.

Plaintiff filed an annual statement for 1930 showing assets in excess of five million dollars, paid the required fee,

and furnished such information to the Investment Commissioner as was required by him, and otherwise seems to have complied with the law. By the bill it appears that plaintiff has 20 agents in Montana duly licensed by the de- [fol. 54] fendant to sell said certificates. That in 1930 plaintiff sold in Montana certificates of the maturity value of $2,141,200.00, to approximately 4500 persons; that its right to do business in this state is of a value largely in excess of $3000.00 and that if it is compelled to comply with such order it will result in unjust and unfair discrimination between present and future holders of such certificates, and disrupt and destroy plaintiff's business and compel it to retire from the state.

The principal contentions of plaintiff, are that section 4036 Revised Codes of Montana, 1921, which authorizes the revocation of a permit "at any time by the Investment Commissioner for cause to him sufficient," and the provision of Section 4045, which authorizes the cancellation of a permit whenever it appears to the investment commissioner that the permittee is conducting its business in an inequitable manner, are in violation of the due process of law clause of the 14th amendment to the Constitution of the United States for failure to provide for notice and opportunity for hearing; and for the further reason that no rule or standard is fixed for determining what is a sufficient cause or when the business is being conducted in an inequitable manner.

No question that plaintiff is a person within the meaning of the due process of law clause of the 14th Amendment, and that its right under the permit to do business in this state is property and entitled to protection when subjected to control of a state law in conflict therewith. Liggett Co. vs. Baldridge, 278 U. S. 105. And that the right to enter into the contract approved by the investment Commissioner, and concerning which the permit to do business was issued, is likewise protected under the 14th amendment. Tyson & Bros. vs. Banton, 273 U. S. 418.

Although in this case a hearing was in fact accorded plaintiff, the Blue Sky Law itself, which was relied upon by the Investment Commissioner, makes no provision for notice or opportunity to be heard. "If the statute did not [fol. 55] provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been

given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is whether any notice is provided for by the statute." Coe vs. Armour Fertilizer Works, 237 U. S. 413, Citing Stewart vs. Palmer, 74 N. Y. 183, 188, 30 A. Rep. 289, involving the validity of a statute assessing the expense of a local improvement upon the land benefitted without notice to the owner. According to the weight of authority, although the owner may have been given notice and even a hearing, indicating a desire for fair play on the part of the officer, that is not sufficient to satisfy the constitutional requirement unless the right to such notice and hearing is embodies in the statute. National Automobile Service Corporation vs. Barford, 137 Atl. (Penn.) 601; Garfield vs. U. S. ex rel. Goldsbay, 211 U. S. 249; C. M. & St. P. Ry. Co. vs. Board of Railroad Commissioners, 76 Mont. 305; Counsel for defendant admit that the original act in question "did not provide specifically for notice to the company by the investment Commissioner on revocation of permits, and no appeal was given to the courts in such cases. The act was open to serious question as to its due process provisions." They now claim in view of the Amendments to Section 4038 as contained in Chapter 194 of the laws of 1931 that the language of the original act has been changed to allow recourse to the courts. Defendant then quotes the original act as follows:

"An appeal may be taken from the decision of the investment commissioner refusing to grant a license to any investment company or stock-broker, to the state board of examiners of this state. Such appeal shall be taken by filing with said state board of examiners an application for a hearing on its case."

The amendment was then quoted as follows:

"Any interested person, who has appeared, copartnership, association or corporation being dissatisfied with any finding, findings or decision of the Commissioner made in accordance with the provisions of this Act, may within thirty days from the making thereof, commence an action in any court of competent jurisdiction against said Commissioner as defendant, to vacate and set aside said find-

[fol. 56] ing, findings or decision on the ground that the said findings or decision are unjust or unreasonable. The rules of pleading and procedure in such action shall be the same as are provided by law for the trial of equitable actions in the district courts of this state and on the hearing the Judge of said court may set aside, modify or confirm said findings or decision as the evidence and the rules of equity may require."

Defendant next contends that while it is true that due process of law is not provided for one who has not appeared before the investment commissioner the plaintiff is not in that class "because they have appeared and belong to a class for which due process is provided * * * and even though as to some classes the statute might be held void, it can not be held void as to plaintiff." In reply plaintiff calls attention to a proviso, ommitted by defendant, which is a part of the amendment of Section 4038 and is in the following language:

"Provided, however, that the original application with reference to which an appeal is herein provided for shall not be heard by the Investment Commissioner until notice of hearing on the same has been published in some newspaper published at the capital city daily, in at least seven issues of such paper, and provided further, that upon such hearing on the original application, any person, co-partnership, association or corporation interested in or opposed to said application may appear."

On reading the original act in connection with the amendment, and especially with the proviso, it seems quite clear that recourse to the courts is not limited to an applicant whose application for a permit has been refused by the commissioner. This wording of the proviso: "Provided, however, that the original application with reference to which an appeal is herein provided for shall not be heard by the Investment Commissioner until notice of the hearing of the same has been published * * *", evidently does not mean that the specific and comprehensive terms of the amendment proper are to be limited by this proviso to a dissatisfied applicant for a license; that language is merely descriptive of the original application "with reference to

which an appeal is herein provided", as in the instance of "any interested person, who has appeared, co-partnership, association or corporation being dissatisfied with any finding, findings or decision of the commissioner made in accordance with the provisions of this Act * * *."

[fol. 57] But notwithstanding this concession to defendant in the interpretation of the amendment it still appears that the law itself as amended does not provide for notice or opportunity for hearing before the permit is revoked, and furthermore, that the decision shall stand, in full force, until an action is commenced and prosecuted to judgment, when the Judge "may set aside, modify or confirm said findings or decision * * *." It would seem that the guaranty of the 14th amendment is challenged when an order is made by the commissioner based upon the statute as amended, revoking a license or permit without notice or hearing to be in effect pending the test of its validity by the court.

Prendergast vs. New York Ill. Co., 262 U. S. 43;
Love vs. Atchison, T. & S. F. Ry. Co. 185 Fed. 321.
C. M. & St. P. R. Co. vs. State of Minn. 134 U. S. 418.

As to the second objection that no rule or standard is provided to determine when a sufficient cause exists or when the business is being conducted in an inequitable manner, the Supreme Court held in U. S. vs. Cohen Grocery Co., 255 U. S. 81, in passing on the constitutionality of the "Lever Act", as follows:

"The sole, remaining inquiry, therefore, is the certainty or uncertainty of the text in question; that is, whether the words, 'That it is hereby made unlawful for any person wilfully * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries,' constituted a fixing by Congress of an ascertainable standard of guilt, and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary. Observe that the section forbids no specific or definite act. It confines the subject-matter of the investigation which it authorizes to no element essentially inhering in the trans-

action as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against. In fact, we see no reason to doubt the soundness of the observation of the court below in its opinion to the effect that, to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury. And that this is not a mere abstraction finds abundant demonstration in the cases now before us; since in the briefs in these cases the conflicting results which have arisen from [fol. 58] the painstaking attempts of enlightened judges in seeking to carry out the statute in cases brought before them are vividly portrayed. As illustrative of this situation we append in the margin a statement from one of the briefs, on the subject. And again, this condition would be additionally obvious if we stopped to recur to the persistent efforts which, the records disclose, were made by administrative officers, doubtless inspired by a zealous effort to discharge their duty, to establish a standard of their own to be used as a basis to render the section possible of execution."

It would seem that the acts threatened by the Investment Commissioner would deprive plaintiff of his property without due process of law on either ground alleged. In the instant case the officer is required to exercise legislative power when he sets up a standard and undertakes to say when a business is being conducted in an inequitable manner. Suppose he were directed by the statute to determine when the price of a commodity charged was unreasonable or excessive, or when it was not necessary to provide a reasonable profit, with no directions or standard to go by; would it not be less complicated than to require him to determine when a business is being conducted in an inequitable manner with no standard in the law as a guide?

It seems to be generally understood that the main object of the socalled Blue Sky Laws is the prevention of fraud. The police power exercised by the legislature does not go to the extent of regulating or prohibiting the sale of securi-

ties or making of contracts based upon the judgment of an investment commissioner or board attempting to insure the public a fair profit on the investment. Nor would the law stand the test if it prohibited such dealing in securities as in the judgment of the commissioner rested upon a plan of organization or conduct of business which was not "fair". Ala. & N. O. Trans. Co. vs. Doyle, 210 Fed. 173. In this case a statutory three judge court held unconstitutional the Blue Sky Laws of Michigan, as violative of the due process clause of the 14th amendment. Later another law of like character was enacted in the same state which was attacked in the same manner, wherein it was declared that the purpose of the act was not the prevention of fraud but to protect the investing public against financial loss, but the Supreme Court held that the purpose of the statute was to [fol. 59] protect investors not from financial loss generally but from fraud. Merrick vs. N. W. Halsey & Co., 242 U. S. 568.

Many authorities are cited by plaintiff to show that it is a delegation of legislative power to authorize the Investment Commissioner to prescribe the terms and provisions of contracts for investment companies. Section 4036, authorizing the Investment Commissioner to revoke a permit "for cause to him sufficient" should be considered in connection with Section 4045; a cause sufficient to the commissioner must be one of the grounds provided in Section 4045. The securities offered for sale had been approved by the Commissioner. Conducting the business in an inequitable manner would necessarily relate to offering the securities for sale and there is nothing in the case to show deception, misrepresentation or fraud.

In Hall vs. Geiger-Jones Co., 242 U. S. 539, 61 L. Ed. 480, involving the Blue Sky Law of Ohio, the Court held:

"It will be observed, therefore, that the law is a regulation of business, constrains conduct only to that end, the purpose being to protect the public against the imposition of unsubstantial schemes and the securities based upon them. Whatever prohibition there is, is a means to the same purpose, made necessary, it may be supposed, by the persistence of evil and its insidious forms and the experience of the inadequacy of penalties, or other repressive measures. The name that is given to the law indicated the

evil at which it is aimed; that is, to use the language of a cited case, "speculative schemes which have no more basis than so many feet of 'blue sky';" or, as stated by counsel in another case, "to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations." Even if the descriptions be regarded as rhetorical, the existence of evil is indicated, and a belief of its detriment; and we shall not pause to do more than state that the prevention of deception is within the competency of government, and that the appreciation of the consequences of it is not open for our review."

Counsel for plaintiff point to the Journal of the last legislative Assembly of Montana, giving the history of "Substitute House Bill No. 182," which failed of passage, as evidence of the intent of the Legislative Assembly that such order of the Investment Commissioner, here in question, should not be authorized. But it seems unnecessary to enter into discussion of questions other than those already considered.

[fols. 60 & 61] Therefore the Court having considered the pleadings, counsel's arguments and briefs submitted, and being duly advised, it is ordered and decreed that the defendant, his employees, agents and representatives be and they are, hereby enjoined from enforcing against the plaintiff herein the threatened order set forth in plaintiff's Bill of Complaint, and furthermore in the opinion of the court the law upon which the foregoing order is based, for the reasons given and to the extent herein above set forth, is violative of the due process of law clause of the 14th amendment to the Constitution of the United States and is therefore void.

Sawtelle, C. J., concurs.

[File endorsement omitted.]

[fol. 62] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

DISSENTING OPINION—Filed Aug. 18, 1931

BOURQUIN, D. J.:

The case is practically all fours with the Hall, Caldwell and Merrick cases, 242 U. S. 539, 559, 568.

In all, are involved Blue Sky Laws alike in all material particulars; in all, like objections were made; and in all those cited, the Supreme Court (8 to 1) reversed the lower tribunals and upheld the laws. Although the personnel of the Court has largely changed and the "presently approved doctrine" may have likewise (See Ferrall's Case, 257 U. S. 533; the Great Falls Case, 39 Fed. (2) 177, 180), those cases are to be followed until reversed by the minority again become the majority. It is true the law in the Hall case provides for notice before cancellation and this at bar does not, but that is immaterial so far as due process goes; for no hearing was allowed and the notice was an idle gesture and sheer futility. It must be remembered that the commissioner's power to prescribe conditions and to cancel permits for breach of them is administrative, delegated by the legislature, and partakes of legislative rather than judicial quality (See Louis Co. v. Garrett, 231 U. S. 318). He can do what the legislature might do, his order is law as though by the legislature made, and as it might create conditions and cancel permits without notice and hearing (Compare the National Council Case, 203 U. S. 163), so may he; in either case due process being afforded by [fol. 63] judicial review which in itself is notice and hearing. The principle which distinguishes due process in legislative proceedings from the like in judicial proceedings, is that in the former, action followed by notice and hearing in judicial review is due process; in the latter, action must be preceded by notice and hearing to be due process. The cases more or less vaguely will be found to follow this rule.

The Minnesota Rate Case, 134 U. S. 418 illustrates it, the court concluding that although the statute authorized the commission without notice or hearing to fix rates, it would be valid if the state court would construe it to permit judicial review. And see Vandalia Co. v. Com. 242 U. S. 260. In any case is the right to judicial review on constitutional grounds, implied if not expressed. See Plymouth Co. v. Penn. 232 U. S. 547; Merrick's Case, 242 U. S. 590; Dayton etc. Co. v. U. S. 263 U. S. 485, 486. Where property alone is involved, judicial review after action, satisfies due process. See Phillips' Case, 283 U. S. —. And here and now plaintiff has judicial review of the order. Compare the Ben Avon Case, 253 U. S. 294. In the matter of standards, the Hall and companion cases cited, are equally conclusive.

See also
Mutual Corp. vs. Com. 236 U. S. 245;
U. S. vs. Grimand, 220 U. S. 517;
Union vs. U. S., 204 U. S. 364;
U. S. vs. Co. 282 U. S. 324.

Multitudes of commissions, federal and state, are vested with more or less power to do what legislatures might do, to stipulate conditions and determine standards of quality, value, reasonableness, etc., for purposes of business and regulation, therein unquestioned or assailed in vain. Of course until a standard is prescribed, it is mere conjecture, the statute binds no one and invokes no penalties.

See
Cohen's Case, 255 U. S. 81;
Cline's Case, 274 U. S. 445.

Investment companies like banks are clothed with sufficient public interest to warrant regulation "to stop rat holes", whether or not is "wisdom in trying to save the [fol. 64] ignorant and rash from folly" of alluring contracts, says Mr. Justice Holmes in Dillingham's Case, 264 U. S. 372, 373. The limit of regulation is reason and the state's to determine. As rates, interest, compensation, wages and the like may be by the state prescribed, no reason is perceived why the "loading charge" (to unload?) or quassi forfeiture in plaintiff's contracts may not be.

They provide that on payment to it of $370 annually in advance for ten years, plaintiff will return $5000; and that the buyer may withdraw after two payments and eighteen months, receiving $210 of the $740 he has paid, the plaintiff retaining $530. Likewise, at later periods, though the return gradually increasing.

The defendant conceiving the quassi forfeiture too great and inequitable, made the order involved that withdrawal be permitted after one year, the buyer to receive all paid plus the guaranteed interest less 3½% of the amount due at maturity. Thus, if the right be exercised promptly at the end of the year, of the $370 paid plus said interest, the buyer would receive $215.35, the plaintiff retaining $175. The statute authorizing defendant to determine whether the "plan" is "fair, just and equitable", and if "inequitable" to cancel permits, his finding that plaintiff's plan is in-

equitable, his order prescribing an equitable standard and condition, and his cancellation of permits of those who breach the condition, all are within the power of the legislature and to defendant delegated, are reasonable, supported by sufficient legal evidence, and consistent with the guarantees of the 14th Amendment.

High-pressure salesmen like hungry locusts swarm the country side, peddling so-called securities which in the [fol. 65] indicated quality are too often comparable to a lien on a flock of wild geese. Their methods are well known. Often the very paper they sell is given some resemblance to government bonds or greenbacks. Their impressive names, the installment plan, the interest higher than paid by banks, and other alluring features, representations, hopes and fears by the salesmen urged, made and excited, may induce ill-considered purchases by those of small means who too often soon regret or are unable to complete. Regulation to diminish their losses well might go to the full return made by banks on withdrawal. Liberty to contract is not a privilege to plunder, and in necessity yields to the police power in behalf of the general welfare.

Union etc. Co. vs. Corp. 248 U. S. 375;
O'Gorman's Case, 282 U. S. 251.

Even existing contracts of future performance may be affected, since "the operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future".

Dillingham's Case, 264 U. S. 374.

Regulation comes on apace or like a flooding tide. Those who kick against the pricks are opposing with weak and flimsy brooms. Even courts grow sensitive to the ground swells.

It is said that Chief Justice White admitted that "in my time we relaxed constitutional guarantees from fear of revolution", and that Chief Justice Taft declared that "at a conference I announced 'I have been appointed to reverse a few decisions', and", with his famous chuckle, "I looked right at old man Holmes when I said it". What a pity were these illuminating incidents lost to history save in so far as the court's reports will verify them.

The trend of the age is again "liberal", however much abused the term or like charity it may cover, and we are on

our way whether or not we know where we are going or [fols. 66 & 67] what we will do when we get there. But so far as regulation is concerned, like it or not, wise or not, it is a fair prophecy that, in classic phrase of the day, "folks, you haint seen nothin' yit".

Decree should go for defendant.

[File endorsement omitted.]

[fols. 68-72] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

FINAL DECREE—Filed Aug. 20, 1931

This cause came on to be heard at this term, before the Court—The Honorable William A. Sawtelle, Circuit Judge, the Honorable George M. Bourquin and the Honorable Charles N. Pray, District Judges, presiding—and was argued by counsel; and thereupon said cause having been submitted for final decision upon consideration thereof, it was ordered, adjudged and decreed, as follows, namely: That the order made and issued by the defendant, as Investment Commissioner of Montana, complained of, and a copy of which is made a part of the bill of complaint, is invalid, and that the defendant and all persons acting in aid or assistance of him, be and they are hereby perpetually enjoined from enforcing said order against said plaintiff, and from commencing and prosecuting any action, or proceeding, against said plaintiff, or from revoking or cancelling plaintiff's permit to do business in Montana, because of failure of plaintiff to comply with said order.

Dated this 19th day of August, 1931.

Bourquin, District Judge, for the Court.

The Clerk will enter.

Bourquin, J.

[File endorsement omitted.]

[fol. 73] IN UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA

In Equity. No. 1190

INVESTORS SYNDICATE, a Corporation, Plaintiff,

vs.

GEORGE P. PORTER, Auditor and ex Officio Investment Commissioner of the State of Montana, Defendant

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Nov. 13, 1931

Comes now George P. Porter, Auditor and ex officio Investment Commissioner of the State of Montana, defendant in the above entitled cause and files the following assignments of error upon which he will rely upon the prosecution of the appeal herewith petitioned for in said cause from the final order, injunction and decree made and entered in the above entitled court and cause on the 20th day of August, 1931.

I

The bill of complaint does not state facts sufficient to constitute a valid cause of action in equity or at all.

II

The United States District Court for the District of Montana erred in holding that code sections 4043, 4036 and 4045, Revised Codes of Montana, 1921, and Chapter 194 of the Session Laws of 1931 (Blue Sky Laws) are void as violative of the due process clause of the Fourteenth Amendment to the Federal Constitution in that the law, itself, makes no [fol. 74] provision for notice or opportunity for hearing by an investment company whose license the investment commissioner may be threatening to revoke.

III

The United States District Court for the District of Montana erred in holding that the guaranty of the due process clause of the Fourteenth Amendment to the federal constitution is challenged when an order is made by the com-

missioner, based upon the above mentioned Blue Sky Laws, and with or without actual notice revoking a license or permit, such order to be in effect pending the test of its validity by the court.

IV

The United States District Court for the District of Montana erred in holding that the Montana Blue Sky statutes and threatened procedure of the defendant are violative of the due process clause of the Fourteenth Amendment to the federal constitution in that no rule or standard is provided in such statutes to determine when sufficient cause for revocation of a license exists or when a given business is being conducted in an inequitable manner.

V

The United States District Court for the District of Montana erred in holding that the Montana Blue Sky statutes violate Section 1 of Article V of the constitution of Montana in that they require the defendant to exercise legislative power and to, himself, set up a legislative standard when he undertakes to say whether a certain business is being conducted in an inequitable manner.

VI

The United States District Court for the District of [fol. 75] Montana erred in holding that the Montana Blue Sky laws are violative of the Fourteenth Amendment to the federal constitution (privileges and immunities clause) in that the police powers which may be exercised by the legislature of a state do not permit them to regulate the sale of securities or the making of contracts, such regulations to rest in the judgment of the investment commissioner of the state as to whether or not such sales or contracts are equitable.

VII

The United States District Court for the District of Montana erred in enjoining the defendant from enforcing his order as against the plaintiff, such order being that it conform to rules promulgated by the commissioner with reference to forfeiture clause and investment contract.

VIII

Wherefore defendant prays that said injunction decree and order be reversed and set aside and for such other and further relief as to the court may seem just and proper.

Dated at Helena, Montana, this 10th day of November, 1931.

L. A. Foot, Attorney General for the State of Montana; T. H. MacDonald, Assistant Attorney General of the State of Montana; Freeman, Thelan & Freeman, Attorneys for Defendant and Appellant, Residing at Helena, Montana. J. W. Freeman, J. N. Thelan, J. P. Freeman.

[fols. 75½ & 76] [File endorsement omitted.]

[fols. 77-84] In United States District Court

(Title of Court and Cause)

Order Allowing Appeal—Filed Nov. 13, 1931

On motion of L. A. Foot, Attorney General of the State of Montana, and T. H. MacDonald, Assistant Attorney General of the State of Montana, counsel for defendant and appellant, it is hereby ordered that an appeal to the Supreme Court of the United States from the injunction, decree and order heretofore filed and entered herein on August 20, 1931, be and the same is hereby allowed and that transcript of the record, testimony, exhibits, stipulations and all proceedings duly authenticated be forthwith transmitted to the Supreme Court of the United States in accordance with the rules of such court in such cases made and provided.

It is further ordered that the bond on appeal be fixed at the sum of $1000.

Dated at Great Falls, this 13th day of November, 1931.

Charles N. Pray, U. S. Dist. Judge.

[File endorsement omitted.]

[fol. 85] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Jan. 23, 1932

The transcript of record in the above entitled action having been filed, appellant makes the following statement of points on which he intends to rely in the premises and designates the part of the record herein which he deems necessary for the consideration of his appeal as follows, to-wit:

I

(1) The bill of complaint does not state facts sufficient to constitute a valid cause of action in equity or at all.

(2) The United States District Court for the District of Montana erred in holding that code sections 4043, 4036 and 4045, Revised Codes of Montana, 1921, and Chapter 194 of the Session Laws of 1931 (Blue Sky Laws) are void as violative of the due process clause of the Fourteenth Amendment to the Federal Constitution in that the law, itself, makes no provision for notice or opportunity for hearing by an investment company whose license the investment commissioner may be threatening to revoke.

(3) The United States District Court for the District of [fol. 86] Montana erred in holding that the guaranty of the due process clause of the Fourteenth Amendment to the federal constitution is challenged when an order is made by the commissioner, based upon the above mentioned Blue Sky Laws, and with or without actual notice revoking a license or permit, such order to be in effect pending the test of its validity of the court.

(4) The United States District Court for the District of Montana erred in holding that the Montana Blue Sky statutes and threatened procedure of the defendant are violative of the due process clause of the Fourteenth Amendment to the federal constitution in that no rule or standard is provided in such statute to determine when sufficient cause for revocation of a license exists or when a given business is being conducted in an inequitable manner.

(5) The United States District Court for the District of Montana erred in holding that the Montana Blue Sky stat-

utes violate Section 1 of Article V of the constitution of Montana in that they require the defendant to exercise legislative power and to, himself, set up a legislative standard when he undertakes to say whether a certain business is being conducted in an inequitable manner.

(6) The United States District Court for the District of Montana erred in holding that the Montana Blue Sky Laws are violative of the Fourteenth Amendment to the federal constitution (privileges and immunities clause) in that the police powers which may be exercised by the legislature of a state do not permit them to regulate the sale of securities or the making of contracts, such regulations to rest in the judgment of the investment commissioner of the state as to whether or not such sales or contracts are equitable.

[fol. 87] II

Appellant designates the following parts of the record as necessary for printing and for the consideration of this Court:

1. Bill of Complaint (Record 2).
2. Amendments to Bill of Complaint (Record 18).
3. Answer to Bill of Complaint (Record 24).
4. Minute Entry of Clerk (Record 44).
5. Majority Opinion (Record 51).
6. Minority Opinion (Record 62).
7. Decree and Order for Injunction (Record 68).
8. Order Allowing Appeal (Record 77).
9. Assignments of Error (Record 73).

—— ——, Attorney General for the State of Montona; —— ——, Assistant Attorney General for the State of Montana, Attorneys for Defendant and Appellant. —— ——, Attorneys for Plaintiff and Appellee.

[fol. 87a] Due personal service of within statement made and admitted and receipt of copy acknowledged this 19th day of January, 1932.

M. S. Gunn, Attorney for Appellee.

[fol. 87b] [File endorsement omitted.]

[fols. 88 & 89] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed Jan. 26, 1932

To the Clerk of the above-entitled Court:

Investors Syndicate, appellee, hereby designates the following additional parts of record as necessary for the consideration of the points on which appellant intends to rely as per statement of points filed, to-wit: Copy of letter and certificate introduced by plaintiff and appellee as part of the stipulation referred to in the minute entry.

Dated at Helena, Montana, this 22nd day of January, 1932.

(M. S. Gunn) M. S. Gunn, One of Counsel for Appellee.

[fol. 90] [File endorsement omitted.]

Endorsed on cover: File No. 36,441. Montana D. C. U. S. Term No. 627. George P. Porter, Auditor and ex-officio Investment Commissioner of the State of Montana, appellant, vs. Investors Syndicate. Filed January 11, 1932. File No. 36,441.